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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE LAS VEGAS TRIBE OF PAIUTE
INDIANS, a federally recognized Indian tribe,

Plaintiff,

vs.

CHRISTOPHER W. PHEBUS, an individual,

Defendant.

CASE NO.: 2:13-cv-02000-RCJ-CWH

**THE LAS VEGAS TRIBE OF PAIUTE
INDIANS' MOTION FOR
DECLARATORY JUDGMENT**

Pursuant to 28 U.S.C. §§ 1362 and 2201 and Rule 57 of the Federal Rules of Civil Procedure, the Las Vegas Tribe of Paiute Indians (the "Tribe") moves for the entry of a declaratory judgment that the Las Vegas Paiute Tribal Court can exercise criminal jurisdiction over Christopher W. Phebus ("Phebus") and other non-member Indians under the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.* (ICRA).¹ This motion is made and based on the following Memorandum of Points and Authorities, the attached exhibits, the entire case file, and any arguments of counsel and/or the parties at any hearing on this matter.

¹ Phebus did not file an answer to the Tribe's complaint (#1).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In May 2013, a Tribal Court of Appeals was convened to adjudicate an appeal by Phebus relative to a six-month sentence of imprisonment imposed by the Las Vegas Paiute Tribal Court after Phebus was adjudicated guilty of violating Tribal Code Section 5-60-020, Improper Influence in Official Matters. Following oral argument, the Tribal Court of Appeals entered a written decision that the Tribal Court cannot exercise criminal jurisdiction over Phebus because he is not an enrolled member in any federally-recognized Indian tribe. Because the decision improperly and substantially interferes with the Tribe's ability to govern criminal conduct that occurs on Tribal property, the Tribe seeks a declaratory judgment that the Tribal Court can, in fact, exercise criminal jurisdiction over non-member Indians under the ICRA.

II. RELEVANT FACTS

A. Background Information.

1. Tribal Organization and Governance.

Pursuant to the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 461 *et seq.* the Tribe is a federally-recognized Indian tribe. See Declaration of the Members of the Tribal Council of the Las Vegas Tribe of Paiute Indians, attached as Exhibit 1, at ¶ 3. The Tribal Constitution, which the Tribe first adopted on July 22, 1970, provides the framework for Tribal governance. Id. In accordance with the Tribal Constitution, the Tribal Council acts as the Tribe's legislative body. Id. In addition, a Tribal Code governs civil and criminal conduct on Tribal property, which primarily consists of the Las Vegas Paiute Colony near downtown Las Vegas, Nevada, and the Snow Mountain Reservation near Northwest Las Vegas. Id.

2. Tribal Courts.

Pursuant to the Tribal Code, the Tribe established a Tribal Court, which adjudicates civil and criminal matters that are subject to the jurisdiction conferred on it by the Tribal Code and/or federal law (including the ICRA). Id. at ¶ 4. In addition, the Tribal Code provides for the empanelment of an appellate court (the Tribal Court of Appeals) when necessary to adjudicate appeals from decisions of the Tribal Court. Id. The Tribal Court of Appeals is the court of last

resort for Tribal Court disputes. Id.

3. Phebus' Tribal Enrollment History.

Phebus was enrolled as a member of the Tribe between 1983 and 1999. Id. at ¶ 5. In July 1999, the Tribal Council voted to disenroll approximately one-fourth of the then-Tribal members, including Phebus, based on a review and recalculation of Las Vegas Paiute ancestral blood quanta. Id.²

Prior to his disenrollment, Phebus held himself out as a Las Vegas Paiute, he received health services from the Tribal health center, and he attended Tribal pow-wows. See Transcript of Status Check Hearing (Oct. 19, 2011), attached as Exhibit 3, at 7:2-24; 9:13-24. He also served on the Tribe's enrollment committee. See Oct. 17, 2012 Trial Tr. (Exh. 2) at 22:7-9.

4. Phebus' Conduct Following Disenrollment.

Following his disenrollment, Phebus has obtained various Tribal or Bureau of Indian Affairs services that are only available to, or accessible by, Tribal members and Indians, including, among other things, health services and counseling. See Tribal Council Decl. (Exh. 1) at ¶ 6.

In addition, Phebus has been cited, arrested, convicted, and/or sentenced numerous times for engaging in illegal and/or socially inappropriate conduct while attempting to persuade the Tribal Court, Tribal members, Tribal police officers, and Tribal Council members that his disenrollment was improper. Id. at ¶ 7. He has consistently disregarded the orders of the Tribal Court, which has resulted in several jail sentences for contempt, and at least one trespass order that barred him from being present on Tribal property for an extended period. Id. Moreover, he has been incarcerated in BIA facilities on several occasions in connection with sentences imposed by the Tribal Court. Id. With the exception of the period of time that Phebus was incarcerated or subject to the trespass order, he has resided with his mother on the Colony. Id.

² As a result of the recalculation, the Tribal Council determined that Phebus' Las Vegas Paiute blood quantum was 3/16, which is less than the 1/4 quantum required for Tribal membership. See, e.g., Transcript of Trial (Oct. 17, 2012), attached as Exhibit 2, at 20:17-22:2.

1 **5. Tribal Court Enrollment Litigation.**

2 Between 2000 and 2005, Phebus and other individuals who were disenrolled conducted
3 civil litigation in the Tribal Court for purposes of contesting the disenrollments. Id. at ¶ 8.
4 Although the Tribal Court of Appeals ultimately ruled that the disenrollments were improper,
5 the Tribal Council made the final decision to uphold the disenrollments.³ Id.

6 **B. Tribal Court Determination Regarding Criminal Jurisdiction.**

7 Between July 1999 and December 2012, Phebus routinely raised his disenrollment as
8 both a barrier to the Tribal Court's jurisdiction and a justification for his criminal conduct. Id.
9 at ¶ 9. However, the Tribal Court expressly determined that it can exercise criminal jurisdiction
10 over Phebus pursuant to United States v. Bruce, 394 F.3d 1215 (9th Cir. 2005), based on his
11 status as an Indian. See Oct. 19, 2011 Hearing Tr. (Exh. 3) at 6:10-11:11; 14:19-24; see also
12 Paiute Tribal Court Order of Remand (filed Oct. 28, 2011), attached as Exhibit 4, at p. 2.

13 **C. Recent Criminal Convictions.**

14 On October 10, 2012, Phebus entered the Tribal Police Department (which also houses
15 the Tribal Court), and began yelling at Don Belcher, the Tribal Chief of Police. See Oct. 17,
16 2012 Trial Tr. (Exh. 2) at 10:14-12:11. After Phebus ignored several directives to stop yelling,
17 he was arrested and charged with disorderly conduct. Id. at 12:1-13:24.

18 The matter was tried to the Tribal Court bench on October 17, 2012. At the close of the
19 Tribe's case-in-chief, the Tribal Court gave Phebus an opportunity to provide a rationale for his
20 behavior. Id. at 17:22-32:6. Phebus generally discussed matters pertaining to his disenrollment,
21 including, among other things, the Tribe's recalculation of his Las Vegas Paiute blood quantum
22 from 5/16 to 3/16. Id. at 20:17-22:2. He also reiterated his argument that his disenrollment
23 prohibits the Tribal Court from exercising criminal jurisdiction over him. Id. at 22:21-23:23.
24 The Tribal Court rejected that argument. Id. at 26:8-13. Ultimately, the Tribal Court
25 adjudicated Phebus guilty of disorderly conduct and sentenced him to time served. Id. at 30:22-
26 32:6.

27
28 ³ Certain of the disenrolled members (not including Phebus) were later reenrolled.

Less than three weeks later, Phebus entered the Tribal Police Department and demanded that Chief Belcher contact the Tribe's general counsel to obtain a copy of a court order pertaining to Phebus' disenrollment. See Trial Transcript (Dec. 27, 2012), attached as Exhibit 5, at 4:5-5:19. When Chief Belcher refused, Phebus threatened to wrap his Certificate of Indian Blood around a rock and throw it through Chief Belcher's office window. Id. at 6:3-15. The next day, Phebus returned to the Tribal Police Department with his Certificate of Indian Blood wrapped around a large rock, and told the dispatcher to "tell Belcher when he comes in tomorrow I got something for him." Id. at 23:5-24:24. As a result, Phebus was charged with violating Tribal Code Section 5-60-020, Improper Influence in Official Matters.

The matter was tried to the Tribal Court bench on December 27, 2012. See generally Exh. 5. Based on Phebus' express admissions (see id. at 37:20-38:25) and other evidence presented at trial, the Tribal Court adjudicated Phebus guilty of the offense. The Tribal Court then gave Phebus numerous opportunities to present mitigating arguments to avoid the six-month jail sentence that the Tribe requested. Id. at 41:15-47:22. However, Phebus continued to raise tangential issues in an attempt to justify the conduct that led to his conviction. Id. Accordingly, the Tribal Court sentenced Phebus to six months in jail. Id. at 48:3-49:11; see also Order and Judgment of Conviction (entered Jan. 4, 2013), attached as Exhibit 6. Thereafter, Phebus was remanded to the custody of the Owyhee Detention Facility, a BIA facility in northern Nevada.

D. Appeal and Decision.

1. Notice of Appeal.

In January 2013, Phebus filed a motion in the Tribal Court, wherein he requested that the sitting Tribal Court judge recuse himself from all future matters involving Phebus. See Motion (filed Jan. 10, 2013), attached as Exhibit 7. The Tribal Court decided to treat the motion as a notice of appeal from the January 4 Order and Judgment of Conviction (Exh. 6). See Order (entered Jan. 16, 2013), attached as Exhibit 8.

1 **2. Order of Stay on Appeal.**

2 In accordance with the foregoing order and the Tribal Code, the Clerk of the Tribal
3 Court convened an appellate panel to adjudicate Phebus' appeal. On May 6, 2013, the Tribal
4 Court of Appeals entered an order scheduling the appeal hearing and directing Phebus' release
5 from BIA custody. See Order of Stay on Appeal, Temporary Release and Restraining Order
6 (filed May 6, 2013), attached as Exhibit 9. The Tribal Court of Appeals also directed the Tribal
7 prosecutor to file a brief addressing (1) the sufficiency of the evidence presented to convict
8 Phebus of the crime of Improper Influence in Official Matters, and (2) whether the sentence
9 imposed was unreasonable or cruel and unusual in light of all of the relevant circumstances. Id.

10 **3. Briefing.**

11 Phebus filed an appeal brief on March 18, 2013, wherein he reiterated his arguments
12 pertaining to the alleged impropriety of his disenrollment. See Phebus Appeal Brief, attached as
13 Exhibit 10. The Tribe filed its brief on May 15, 2013, wherein it addressed, in detail, the two
14 issues presented by the Tribal Court of Appeals. See Respondent's Appeal Brief, attached
15 (without appendix of exhibits) as Exhibit 11.

16 **4. Hearing.**

17 The Tribal Court of Appeals conducted the appeal hearing on May 17, 2013. In addition
18 to entertaining the Tribe's arguments regarding the issues raised in its appeal brief, the Tribal
19 Court of Appeals directed the Tribal prosecutor to discuss whether the Tribal Court could
20 exercise criminal jurisdiction over Phebus because he is not enrolled in any federally-
21 recognized Indian tribe. See Transcript of Appeal Hearing (May 17, 2013), attached as Exhibit
22 12. At the conclusion of the hearing, the Tribal Court of Appeals determined that the Tribal
23 Court did not have criminal jurisdiction over Phebus because he is not enrolled in any federally-
24 recognized Indian tribe. Id.

25 **5. Decision.**

26 Three weeks later, the Tribal Court of Appeals entered its written decision on the appeal.
27 See Tribal Court of Appeals Decision (entered June 10, 2013), attached as Exhibit 13.
28

1 **E. Ramifications of Decision.**

2 As a result of the decision of the Tribal Court of Appeals, the Tribal Court cannot
3 exercise criminal jurisdiction over Phebus or any other individual who satisfies the definition of
4 “Indian” under the ICRA, but who is not enrolled in a federally-recognized Indian tribe. This
5 ruling is contrary to federal statutory and common law, and infringes on the Tribe’s right to
6 prosecute non-member Indians (including Phebus) who commit certain crimes on Tribal
7 property. For that reason, and because the Tribe has exhausted all available Tribal judicial
8 remedies, the Tribe seeks a declaratory judgment that the Tribal Court can, in fact, exercise
9 criminal jurisdiction over Phebus and other non-member Indians.

10 **III. ARGUMENT**

11 **A. Legal Standards.**

12 **1. Federal Court Jurisdiction (General).**

13 Pursuant to 28 U.S.C. § 1362, federal district courts have original jurisdiction over any
14 civil action brought by a federally-recognized Indian tribe if the matter in controversy arises
15 under federal law. 28 U.S.C. § 2201 provides, in relevant part, that “[i]n a case of actual
16 controversy within its jurisdiction, . . . any court of the United States, upon the filing of an
17 appropriate pleading, may declare the rights and other legal relations of any interested party
18 seeking such declaration” Finally, Rule 57 of the Federal Rules of Civil Procedure permits
19 a federal court to “order a speedy hearing of a declaratory judgment action.”

20 **2. ICRA.**

21 a. Tribal Court Jurisdiction Over Indians.

22 The ICRA grants all federally-recognized Indian tribes “powers of self-government,”
23 including the “inherent power . . . to exercise criminal jurisdiction over all Indians.” 25 U.S.C.
24 § 1302(2).

25 b. Definition of “Indian”.

26 Under the ICRA, “Indian” is defined as “any person who would be subject to the
27 jurisdiction of the United States as an Indian under [19 U.S.C. § 1153 (the Major Crimes Act)],
28 if that person were to commit an offense listed in that section in Indian country to which that

section applies.” 25 U.S.C. § 1301(4). In other words, the ICRA and the Major Crimes Act utilize the same definition of “Indian.”

In United States v. Bruce, 394 F.3d 1215 (9th Cir. 2005), the Ninth Circuit Court of Appeals set forth a test for determining whether an individual is an “Indian” for purposes of the Major Crimes Act. The first prong of this test is satisfied by demonstrating that a defendant has “some” Indian blood. Although courts have not determined the minimum necessary blood quantum to meet this requirement, at the very least, a quantum of 1/8 is sufficient. Id. at 1223-24.

Under the second prong of the test, courts analyze whether a tribe or government has recognized the defendant as an Indian, which requires an assessment of four factors: “(1) tribal enrollment; (2) government recognition formally and informally through receipt of assistance reserved only to Indians; (3) enjoyment of benefits of tribal affiliation; and (4) social recognition as an Indian through residence on a reservation and participation in Indian social life.” Id. at 1224 (citations omitted). Standing alone, tribal enrollment is not determinative of Indian status. Id. at 1224 (citations omitted) (“A person may still be an Indian though not enrolled with a recognized tribe . . . ; enrollment, and, indeed, even eligibility therefor, is not dispositive of Indian status.”).

In United States v. LaBuff, 658 F.3d 873, 877-79 (9th Cir. 2011), the Ninth Circuit Court of Appeals held that the definition of “Indian” under the Major Crimes Act includes individuals whom the Tribal Court of Appeals identified as “generic Indians”: people who satisfy the Bruce test, but are not enrolled in a federally-recognized Indian tribe. However, there do not appear to be any published decisions that utilize the Bruce test (or a similar test) for purposes of determining whether an individual meets the definition of “Indian” under the ICRA. Nevertheless, because the term “Indian” has the same meaning under both the ICRA and the Major Crimes Act, the Bruce test can be used in making that determination.

3. Federal Court Review of Tribal Court Jurisdiction.

The ICRA affords the privilege of habeas corpus to any individual who wishes to “test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303. It does not afford

an analogous right to Indian tribes (i.e., an Indian tribe cannot seek federal court review of a tribal court judgment of acquittal). Nevertheless, in certain instances, federal courts may review issues of tribal court jurisdiction after a party has exhausted all available tribal remedies. See, e.g., Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 19 (1987) (once a petitioner exhausts all tribal remedies, “determination of tribal jurisdiction is ultimately subject to review . . . in the District Court”); see also Nat’l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 856-57 (1985).

B. This Court Has Jurisdiction to Adjudicate This Dispute.

1. This Court Has Jurisdiction Pursuant to 28 U.S.C. § 1362.

As an initial matter, this case arises under federal law, in that the Tribe is seeking a declaration that Phebus is subject to Tribal Court criminal jurisdiction under the ICRA because he satisfies the definition of “Indian” under Bruce. Therefore, this Court has jurisdiction to adjudicate this matter under 28 U.S.C. § 1362.

2. This Court Has Jurisdiction under LaPlante and Crow Tribe.

Moreover, while LaPlante and Crow Tribe both examined the propriety of a tribal court’s exercise of civil jurisdiction over non-Indians, they are sufficiently analogous to the issue presented here to be instructive. Specifically, in both of those cases, the petitioners (an Iowa insurance company in LaPlante, and a Montana school district in Crow Tribe) alleged that the tribal court could not exercise civil jurisdiction over them because they were non-Indian entities. In both cases, the United States Supreme Court stated that district courts could examine the jurisdictional issues presented, but only after the parties had exhausted their tribal remedies. LaPlante, 480 U.S. at 19; Crow Tribe, 471 U.S. at 856-57.

If federal courts are permitted to review matters that originate in tribal courts to determine when tribal courts cannot exercise jurisdiction, it stands to reason that federal courts are permitted to review matters that originate in tribal courts to determine when tribal courts can exercise jurisdiction. Therefore, this Court can adjudicate the jurisdictional issue presented because the Tribe has exhausted all available Tribal remedies.

1 **3. The Issue Presented is Not Moot.**

2 As a general rule, Article III of the Constitution requires that there be a live case or
3 controversy at the time that a federal court decides a case. Issues that are “capable of repetition,
4 yet avoiding review,” however, present an exception to the mootness doctrine. Doe v. Madison
5 School Dist. No. 321, 177 F.3d 789, 798 (9th Cir. 1999). In order for the exception to apply,
6 the duration of the challenged action must be “too short to be fully litigated before it ceases,”
7 and there must be “a reasonable expectation that the plaintiffs will be subjected to the same
8 action again.” Id. (citation omitted).

9 The underlying dispute between Phebus and the Tribe relative to the criminal conviction
10 at issue arguably ended when the Tribal Court of Appeals issued its decision, as the Tribe will
11 not seek any further criminal sanctions against Phebus in connection with that conviction in the
12 event that the Court enters a declaratory judgment in favor of the Tribe. Because of the decision
13 of the Tribal Court of Appeals, however, the Tribe has been deprived of its Congressionally-
14 granted authority to prosecute Phebus and/or other non-member Indians (i.e., individuals who
15 are not enrolled in a federally-recognized Indian tribe, but who satisfy the definition of “Indian”
16 under Bruce) for future offenses in Tribal Court because the Tribal Court will dismiss for lack
17 of jurisdiction. Therefore, the challenged action (the Tribe’s ability to prosecute non-member
18 Indians in Tribal Court) is “too short to be fully litigated before it ceases.”

19 Similarly, it is an absolute certainty that Phebus and/or other non-member Indians will
20 be arrested on Tribal property in the future. Thus, there is “a reasonable expectation that the
21 [Tribe] will be subject to the same action (i.e., the application of the Tribal Court of Appeals’
22 decision) again.”

23 As the foregoing makes clear, the issue of Tribal Court criminal jurisdiction is “capable
24 of repetition, yet evading review,” in that the issue will arise every time that the Tribe arrests a
25 non-member Indian who, but for the decision of the Tribal Court of Appeals, would be subject
26 to prosecution in Tribal Court. Therefore, the mootness doctrine is inapplicable.

1 **C. The Tribal Court Has Jurisdiction Over Phebus.**

2 As the Tribal Court has previously decided on more than one occasion, Phebus satisfies
 3 the definition of “Indian” under Bruce. See, e.g., Exhs. 3 and 4. Phebus has never appealed this
 4 determination to the Tribal Court of Appeals. Therefore, this Court should not conduct a Bruce
 5 analysis relative to Phebus, on the grounds that Phebus has not exhausted his Tribal remedies
 6 relative to that issue. Nevertheless, if the Court determines that such an analysis is necessary to
 7 the resolution of this motion, certain of the attached exhibits clearly support the Tribal Court’s
 8 determination that Phebus meets the definition of “Indian” under Bruce. See, e.g., Exhs. 1-4;
 9 11.

10 More importantly, as previously discussed, LaBuff makes clear that if Phebus commits a
 11 serious crime on Tribal property, he can be prosecuted in federal court under the Major Crimes
 12 Act. 658 F.3d at 877-79. Given that the Major Crimes Act and the ICRA contain the same
 13 definition of “Indian,” it makes no sense that the Tribal Court cannot exercise criminal
 14 jurisdiction over Phebus for minor crimes under the ICRA.

15 **D. This Court’s Ruling On The Issue of Criminal Jurisdiction is Critical to**
 16 **Tribal Self-Governance.**

17 Finally, the hearing transcript and the decision on Phebus’ Tribal Court appeal suggest
 18 that the Tribal Court of Appeals was attempting to right a perceived wrong (i.e., it appears that
 19 the Tribal Court of Appeals decided that because the Tribal Council upheld Phebus’
 20 disenrollment in spite of a prior ruling that the disenrollment was improper, the Tribal Court
 21 should not be permitted to exercise criminal jurisdiction over Phebus.) The decision, however,
 22 affects all non-member Indians; it is not limited to Phebus. Specifically, if non-member Indians
 23 are arrested on Tribal property, they must be transported to a local municipal jail for processing.
 24 Because the State of Nevada and local jurisdictions cannot prosecute Indians for crimes
 25 committed on Tribal property (see, e.g., 25 U.S.C. § 1326 (absent tribal consent, states cannot
 26 prosecute Indians for crimes committed on tribal property)), non-member Indians can assert
 27 their Indian status and completely avoid prosecution. Therefore, this Court’s ruling on the issue
 28

1 presented in this motion is critical to the Tribe's ability to govern the conduct of non-member
2 Indians on Tribal property.

3 **IV. CONCLUSION**

4 Based on the foregoing, the Court should enter a declaratory judgment in favor that the
5 Tribe can exercise criminal jurisdiction over Phebus and other non-Tribal members who satisfy
6 the definition of "Indian" under Bruce.

7 Dated: February 10, 2014.

8 McDONALD CARANO WILSON LLP

9 By: 

10 Patrick J. Murch (#10162)

11 Rory T. Kay (#12416)

12 2300 West Sahara Avenue, Suite 1200

13 Las Vegas, Nevada 89102

14 *Attorneys for the Las Vegas Tribe*
15 *of Paiute Indians*

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CERTIFICATE OF SERVICE

I certify that I am an employee of the law firm of McDonald Carano Wilson LLP and, on February 11, 2014, I caused a copy of the foregoing **THE LAS VEGAS PAIUTE TRIBE OF INDIANS' MOTION FOR DECLARATORY JUDGMENT** to be served, via U.S. Mail, upon the following:

Christopher W. Phebus
1309 Ken Street
Las Vegas, Nevada 89106

Defendant

/s/ Melissa A. Merrill
An employee of McDonald Carano Wilson LLP

293541

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EXHIBIT 1

EXHIBIT 1

**DECLARATION OF THE MEMBERS OF THE TRIBAL COUNCIL
OF THE LAS VEGAS TRIBE OF PAIUTE INDIANS IN SUPPORT OF
THE LAS VEGAS TRIBE OF PAIUTE INDIANS'
MOTION FOR DECLARATORY JUDGMENT**

The undersigned declare as follows:

1. We are current members of the Tribal Council for the Las Vegas Tribe of Paiute Indians (the "Tribe"), plaintiff in Case No. 2:13-cv-02000-RCJ-CWH, The Las Vegas Tribe of Paiute Indians v. Christopher W. Phebus, pending in the United States District Court for the District of Nevada.

2. This declaration, which is submitted in support of the Tribe's Motion for Declaratory Judgment, is made of our own personal knowledge.

3. Pursuant to the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 461 *et seq.* the Tribe is a federally-recognized Indian tribe. The Tribal Constitution, which the Tribe first adopted on July 22, 1970, provides the framework for Tribal governance. In accordance with the Tribal Constitution, the Tribal Council acts as the Tribe's governing body. In addition, a Tribal Code provides the legislative authority for the regulation of civil and criminal conduct on Tribal property, which primarily consists of the Las Vegas Paiute Colony near downtown Las Vegas, Nevada, and the Snow Mountain Reservation near Northwest Las Vegas.

4. Pursuant to the Tribal Code, the Tribe established a Tribal Court, which adjudicates civil and criminal matters that are subject to the jurisdiction conferred on it by the Tribal Code and/or federal law (including the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303). In addition, the Tribal Code provides for the empanelment of an appellate court (the Tribal Court of Appeals) when necessary to adjudicate appeals from decisions of the Tribal Court. The Tribal Court of Appeals is the court of last resort for Tribal Court disputes.

5. Defendant Christopher Phebus ("Phebus") was enrolled as a member of the Tribe between 1983 and 1999. In July 1999, the Tribal Council voted to disenroll approximately one-fourth of the then-tribal members, including Phebus, based on a review and recalculation of ancestral Las Vegas Paiute blood quanta.

1 6. Following his disenrollment, Phebus has obtained various Tribal or Bureau of
2 Indian Affairs services that are only available to, or accessible by, Tribal members and Indians,
3 including, among other things, health services and counseling.

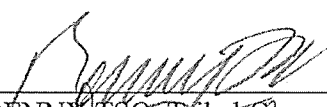
4 7. Also following his disenrollment, Phebus has been cited, arrested, convicted,
5 and/or sentenced numerous times for engaging in illegal and/or socially inappropriate conduct
6 while attempting to persuade the Las Vegas Paiute Tribal Court, Tribal members, Tribal police
7 officers, and Tribal Council members that his disenrollment was improper. He has consistently
8 disregarded the orders of the Tribal Court, which has resulted in several jail sentences for
9 contempt, and at least one trespass order that barred him from being present on Tribal property
10 for a period of two years. In addition, he has been incarcerated in BIA facilities on several
11 occasions in connection with sentences imposed by the Tribal Court. With the exception of the
12 period of time that Phebus was incarcerated or subject to the trespass order, he has resided with
13 his mother on the Colony.

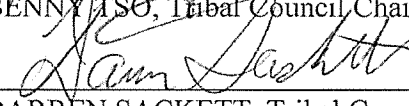
14 8. Between 2000 and 2005, Phebus and other individuals who were disenrolled from
15 the Tribe conducted civil litigation in the Tribal Court for purposes of contesting the
16 disenrollments. Although the Tribal Court of Appeals ultimately ruled that the disenrollments
17 were improper, the Tribal Council made the final decision to uphold the disenrollments.

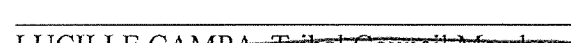
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2 as both a barrier to the Tribal Court's criminal jurisdiction over him, and as a justification for his
3 criminal conduct.

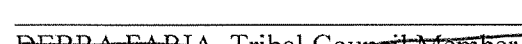
4 We declare under penalty of perjury that the foregoing is true and correct.


5 Executed on ^{Feb} January 3, 2014.

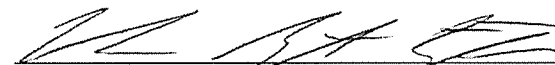
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7 
8 BENNY ISO, Tribal Council Chair

9 
10 DARREN SACKETT, Tribal Council Vice-Chair

11 
12 LUCILLE CAMPA, Tribal Council Member

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14 DEBRA FARIA, Tribal Council Member

15 
16 ROBERT SEGMILLER, Tribal Council Member

17 
18 CHRIS SPOTTED EAGLE, Tribal Council Member

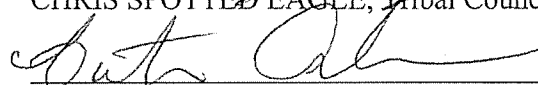
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20 CURTIS ANDERSON, Tribal Council Member
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EXHIBIT 2

EXHIBIT 2

PHEBUS

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10/17/12

<p>1 CASE NO. CR12-007</p> <p>2</p> <p>3 LAS VEGAS PAIUTE TRIBAL COURT</p> <p>4</p> <p>5 -oOo- COPY</p> <p>6</p> <p>7 LAS VEGAS PAIUTE TRIBE,)</p> <p>8 Plaintiff,) REPORTER'S TRANSCRIPT</p> <p>9 vs.) OF</p> <p>10 CHRISTOPHER PHEBUS,) TRIAL</p> <p>11 Defendant.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15 BEFORE THE HON. CAL J. POTTER, III, TRIBAL JUDGE</p> <p>16 WEDNESDAY, OCTOBER 17, 2012</p> <p>17 3:13 p.m.</p> <p>18</p> <p>19 APPEARANCES:</p> <p>20 For the Tribe: PATRICK J. MURCH, ESQ.</p> <p>21 For the Defendant: In Proper Person</p> <p>22</p> <p>23</p> <p>24 Reported by: CHERYL GARDNER, RMR-RPR</p> <p>25 CCR No. 230</p>	<p>Page 3</p> <p>1 at 3:32 p.m.)</p> <p>2 THE COURT: I appreciate your patience</p> <p>3 both of you for the juvenile case being taken out</p> <p>4 of order. This is the time set for Tribe versus</p> <p>5 Christopher Phebus in CR12-007, the time set for</p> <p>6 trial. The defendant was arraigned on October the</p> <p>7 11th on a charge of disorderly conduct. The Court</p> <p>8 entered a not guilty plea on behalf of the</p> <p>9 defendant and released him from custody on his own</p> <p>10 recognizance.</p> <p>11 The defendant was ordered to stay away</p> <p>12 from the administration building and the police</p> <p>13 department. He was also ordered to have no contact</p> <p>14 with Chief Belcher, Officer Bell, Officer Dawkins,</p> <p>15 and Everson Nakai.</p> <p>16 Let the record reflect Mr. Phebus is</p> <p>17 here out of custody and Mr. Murch is representing</p> <p>18 the Tribe. Are we ready to proceed?</p> <p>19 MR. MURCH: We are, Your Honor.</p> <p>20 Mr. Phebus indicated that he'd like to go to trial.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. MURCH: I'm prepared to start.</p> <p>23 THE COURT: Any opening statements?</p> <p>24 MR. MURCH: No.</p> <p>25 THE COURT: Mr. Phebus.</p>
<p>Page 2</p> <p>1 LAS VEGAS, CLARK COUNTY, NV, WED., OCTOBER 17, 2012</p> <p>2 3:13 p.m.</p> <p>3 -oOo-</p> <p>4 PROCEEDINGS</p> <p>5 THE COURT: The next case on the</p> <p>6 calendar is Mr. Phebus's case. Is that going</p> <p>7 forward?</p> <p>8 MR. MURCH: I haven't had a chance to</p> <p>9 speak with Mr. Phebus about the case today because</p> <p>10 we got into a discussion about his past history and</p> <p>11 I cut that off because we got into a discussion</p> <p>12 about the Tribe's jurisdiction and the issues that</p> <p>13 have already been resolved by this Court.</p> <p>14 THE COURT: Okay. Can I ask you to</p> <p>15 have a conference so I can deal with the matter of</p> <p>16 Jewel Chee. It's a juvenile matter. It needs to</p> <p>17 be in a closed session.</p> <p>18 MR. PHEBUS: Can't we just get mine</p> <p>19 done?</p> <p>20 THE COURT: Not right now.</p> <p>21 MR. PHEBUS: You see what's happening</p> <p>22 to me.</p> <p>23 (Whereupon a recess was</p> <p>24 taken at 3:13 p.m. and</p> <p>25 the proceedings resumed</p>	<p>Page 4</p> <p>1 THE DEFENDANT: Judge, this disorderly</p> <p>2 conduct I have a reason for why I am disorderly but</p> <p>3 after 13 years of disenrollment --</p> <p>4 MR. MURCH: I would object, Your</p> <p>5 Honor, to any comments or statements about</p> <p>6 disenrollment, any issues that relate to the</p> <p>7 determination by this Court. The Court has</p> <p>8 jurisdiction over Mr. Phebus because of his status</p> <p>9 as an Indian and it has nothing to do with his</p> <p>10 status or lack of status as a Paiute.</p> <p>11 THE DEFENDANT: And I would like to</p> <p>12 clarify what this Court has established with those</p> <p>13 decisions.</p> <p>14 THE COURT: That's fine as long as</p> <p>15 it's preliminary. You understand the Court has</p> <p>16 jurisdiction over the matter but if you want to</p> <p>17 explain what happened in that context, that's fine.</p> <p>18 THE DEFENDANT: Can I also explain the</p> <p>19 Court's jurisdiction and what it has established</p> <p>20 and why it has jurisdiction because it affects me</p> <p>21 when you guys prosecute me. It does. You don't</p> <p>22 understand that so if we can have the time, will</p> <p>23 you let me explain some of the things I have down.</p> <p>24 THE COURT: What I'm just asking now</p> <p>25 is an opening statement on the charge of disorderly</p>

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1 conduct. You'll have an opportunity to tell your
2 side of the case.

3 THE DEFENDANT: Okay. An opening
4 statement? What does that include? What am I
5 supposed to say? Why I did it, why?

6 THE COURT: You can tell me whether
7 you consider -- I mean the focus that I would look
8 at would be the statements that you made when you
9 believe that they were protected speech if it's
10 speech or if it's conduct. I will try to focus on
11 those issues. You clearly have a first amendment
12 right to make statements. Okay? The issue is
13 whether you were disorderly or whether you were
14 trying to explain. Okay?

15 THE DEFENDANT: Okay. Yes. I was
16 angry which caused me to be disorderly. Of this
17 13 years and the time that Belcher is police chief
18 for things that have happened with law enforcement
19 and the tribal court as I tried to explain to
20 Mr. Belcher I get angry. Okay?

21 Now, when I try to explain things
22 about the tribal court when I have grievances with
23 Belcher which I do which affect me with law
24 enforcement and affect my tribal court, I cannot go
25 across the street and complain on Belcher because he

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1 is protected because he is an employee of the
2 Tribe. I am Chris, a person who is Tribe. I may
3 not be a member but I am still an Indian.

4 THE COURT: Correct.

5 THE DEFENDANT: Okay. So I have to
6 get in trouble because I have before gave you a
7 case which in fact you trespassed me for Lucille
8 Campa which again I tried to reasonably go across
9 the street and speak about the differences that I
10 have the right to speak to Lucille about as a
11 Paiute, but I cannot because this Court enforces
12 laws and order against me.

13 I am stuck in a parallel where I got a
14 court order saying I'm a Las Vegas Paiute but the
15 Court put me in jail as an Indian and what good is
16 the court. Is it only meant for me to prosecute me
17 because it ain't meant for me to be a Las Vegas
18 Paiute.

19 I have a problem. That's why I get
20 angry. That's why I get disorderly because you've
21 left me in a parallel where my family cannot get
22 due process or we get no justice. Today you, what
23 you have left me, you -- I have a court order
24 explaining why I'm a Las Vegas Paiute. You sit up
25 there I hate to say it like that but take Las Vegas

1 Paiute and the name for granted when you prosecute
2 me.

3 If I cannot use that court order, what
4 are you using because I don't understand it. I'm
5 confused seriously. You cause an issue where my
6 family cannot even live on this reservation and may
7 jeopardize our future here. My family's already
8 been kicked out. We've got an open court case and
9 that is effected by my disenrollment. Everything
10 this court does to me is effected by those
11 disenrollments which you do not even look at.

12 I drew a paper, sir, about the Bruce
13 test and how it establishes and how I get the blood
14 quantum that gives you guys the right to use the
15 Bruce test on me. When you use that Bruce test on
16 me, it verifies that I am still an Indian because I
17 am a member of, I am a descendant of a tribal
18 member who is Las Vegas Paiute.

19 Well, the reason why my mom is a Las
20 Vegas Paiute is because she is a descendant of two
21 parents that were Las Vegas Paiute. So when you
22 use that Bruce test on me and limit my blood
23 quantum to only an Indian just above an eight, how
24 do you do it for the rest of these people back here
25 when they don't got grandmas and grandpas and

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1 they're claiming one individual great grandparent.

2 Where does this Court get Las Vegas
3 Paiute? Where do you get it when I've got a court
4 order proving it? You're putting us in jeopardy
5 when you put them people in jail and they don't
6 have the blood quantum. I don't get the chance to
7 explain that to you because you keep putting me in
8 jail.

9 THE COURT: Okay. Do you understand
10 that the blood quantum has nothing to do with what
11 we're doing here?

12 THE DEFENDANT: When you use Bruce
13 test yes, it does. To put me in jail yes, it does.

14 THE COURT: Do you live on the Colony?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: And you've been a member
17 of the tribe.

18 THE DEFENDANT: That's right, and I'm
19 an Indian.

20 THE COURT: See, you're confusing
21 being a Paiute with jurisdiction for this court.

22 THE DEFENDANT: Isn't this court Las
23 Vegas Paiute tribal court, not Las Vegas Indian
24 court. Las Vegas tribal court you defeat my
25 purpose in that court order all the court orders.

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1 THE COURT: I don't.
 2 THE DEFENDANT: You do.
 3 THE COURT: You have a court order
 4 saying you're a Paiute. Okay.
 5 THE DEFENDANT: But when you let the
 6 Tribe issue a certificate of blood, another blood
 7 quantum, you defeat that court order and the blood
 8 quantum that's listed on it. You defeat my
 9 mom's -- when this Court made the court order for
 10 you to put me in that jail for Bruce test my mom as
 11 soon as they were going to get disenrolled through
 12 Terry Coffing and Dave Colvin.
 13 Terry Coffing issued a court order
 14 where the Tribe could not touch her record. Well,
 15 the Tribe touched her record anyway and you let
 16 them but I'm not going to give you that court order
 17 because of your own record. You ought to know
 18 about it. You want me to present a case to you. I
 19 already have a case. What do these guys have?
 20 You're just sitting up there using our name. I am
 21 proof of it.
 22 THE COURT: All right. Anything
 23 else?
 24 THE DEFENDANT: I don't know what you
 25 want from me.

1 A. Yes, I do.
 2 Q. How do you know him?
 3 A. From personal contact around the
 4 Colony.
 5 Q. Is Mr. Phebus present in the
 6 courtroom?
 7 A. Yes, he is.
 8 Q. Can you identify him, please.
 9 A. Yes. He's sitting at the table
 10 sitting in the blue jeans and the striped shirt.
 11 Q. Were you working the night of
 12 October 10, 2012?
 13 A. Yes.
 14 Q. Did you have an encounter with
 15 Mr. Phebus that night?
 16 A. It was around 2:00 o'clock.
 17 Q. I'm sorry. Can you describe the
 18 encounter that you had with Mr. Phebus.
 19 A. Yes. I was here in a meeting with my
 20 Halloween party that we were planning for the 25th
 21 and when I come out of the meeting, we had
 22 personnel here from the health clinic, our CDC
 23 facility, and a couple of tribal members were over
 24 and when I come out of the meeting, Chris Phebus
 25 was at the front door.

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1 THE COURT: I want to find out from
 2 you what happened and I think we'll do that in the
 3 trial. Do you have anything else you want to say?
 4 THE DEFENDANT: No.
 5 THE COURT: Okay. Have a seat.
 6 MR. MURCH: The Tribe calls Chief
 7 Belcher.
 8
 9 DON BELCHER,
 10 having been first duly sworn to testify to the
 11 truth, the whole truth and nothing but the truth,
 12 was examined and testified as follows:
 13
 14 DIRECT EXAMINATION
 15 BY MR. MURCH:
 16 Q. Good afternoon, chief.
 17 A. Good afternoon.
 18 Q. Will you state your name for the
 19 record, please.
 20 A. Don Belcher. I'm the police chief
 21 with the Las Vegas Paiute Tribe.
 22 Q. How long have you been employed in
 23 that position?
 24 A. About five years.
 25 Q. Do you know Christopher Phebus?

1 Q. I'm sorry. Let me interrupt for one
 2 second. When you say "here," do you mean in this
 3 building?
 4 A. Yeah. I was in the courtroom right
 5 here, and he started yelling at me halfway from the
 6 bathroom. He was right outside the front door to
 7 the front door when he seen me. He was yelling at
 8 me. When I opened the door, I said, "Stop
 9 yelling." He told me, "Fuck you, you're fucking my
 10 family," and saying in such a tone I couldn't calm
 11 him down. I said, "Stop right now."
 12 THE DEFENDANT: You are.
 13 THE WITNESS: And he continued to do
 14 that and became even more in my opinion violent so
 15 I went out the door and he started saying
 16 motherfuck this and that so I arrested him outside
 17 for disorderly conduct.
 18 MR. MURCH: Okay.
 19 Q. When you first came to the front door,
 20 it's a double set of doors out there. Are you
 21 talking about the outside front door or the inside
 22 front door by the --
 23 A. Well, he's inside at the dispatch
 24 area.
 25 Q. So you're talking about the inside.

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1 A. Yes, the inside two front doors.
 2 Q. And were there other people in the
 3 area?
 4 A. Yes, my dispatcher was in there and
 5 like I said the other personnel here.
 6 Q. How many people were there?
 7 A. In this meeting?
 8 Q. Yes.
 9 A. One, two, three, four, five, six -- at
 10 least six, maybe seven.
 11 Q. And were those people in an area where
 12 you believe could have heard Mr. Phebus yelling at
 13 the front door?
 14 A. Without a doubt, yes.
 15 Q. Do you believe that they did hear
 16 Mr. Phebus yelling at the front door?
 17 A. I know some did. I know the captain
 18 was back there also. He said he could hear him in
 19 his office. It was right outside the door.
 20 Q. And then you went outside with
 21 Mr. Phebus and you asked him to calm down.
 22 A. Yes. I asked him several times and he
 23 just continued to get louder so that's why I had to
 24 arrest him.
 25 MR. MURCH: Okay. I have no further

1 Q. And haven't they always been part of
 2 my -- when I come over here to talk to you, haven't
 3 they always where I have tried to explain to you
 4 and sit down and explain to you why I get so angry
 5 and you don't let me.
 6 A. I do let you, Chris. As long as
 7 you're not gelling and cussing and calling me
 8 names.
 9 THE DEFENDANT: I don't have no more.
 10 (Whereupon the defendant
 11 concluded his examination
 12 at 3:41 p.m.)
 13 THE COURT: Did you consider him to be
 14 a threat?
 15 THE WITNESS: Yes, I did. In the past
 16 Chris has been threatening. He's busted out one of
 17 our police units as far as the windows. He's --
 18 THE COURT: I don't want to get into
 19 the past.
 20 THE WITNESS: Yes.
 21 THE COURT: I'm talking about the
 22 incident here.
 23 THE WITNESS: Yes.
 24 THE COURT: I mean as a judge I
 25 believe people have a first amendment right. I

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1 questions.
 2 (Whereupon Mr. Murch concluded
 3 his examination at 3:39 p.m.)
 4 THE COURT: Do you have
 5 cross-examination, Mr. Phebus?
 6 THE DEFENDANT: Yeah.
 7
 8 CROSS-EXAMINATION
 9 BY THE DEFENDANT:
 10 Q. Mr. Belcher, you're an employee. Are
 11 you a Las Vegas Paiute?
 12 A. No.
 13 Q. All right. Do you make determinations
 14 who is Indian and who is not before you arrest
 15 them. Yes or no?
 16 A. I do.
 17 Q. So it's at your discretion.
 18 A. Yes.
 19 Q. Okay. All right. I apologize. I was
 20 disorderly, but when I come to this office, do I
 21 ask you questions or not regarding our
 22 disenrollment and how I am effected by law
 23 enforcement when you guys arrest me because when I
 24 come over -- do I ask you those questions?
 25 A. You have.

1 mean if it was just the swearing or is it the
 2 message behind the swearing, you know, is what I'm
 3 trying to find out. If you were in fear.
 4 THE WITNESS: Well, I do protect and
 5 watch myself when I'm with him because I have been
 6 hit by Chris before and so I do watch that and I
 7 feel like when he gets to a point in time he has
 8 lost control. Whether he means to or not I have to
 9 be cautious with that and I felt like I was in that
 10 position at this time.
 11 THE COURT: All right. I don't have
 12 any other questions. As a result of my questions
 13 if you have any questions, you can follow-up on my
 14 questions.
 15 MR. MURCH: I don't have any other
 16 questions, Your Honor.
 17 THE COURT: Okay. Can the witness be
 18 excused? Step down.
 19 (Whereupon Don Belcher was
 20 excused from the witness stand
 21 at 3:42 p.m.)
 22 MR. MURCH: Your Honor, that's my only
 23 witness.
 24 THE COURT: All right. Mr. Phebus,
 25 you have the right to testify or call witnesses in

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1 your own behalf if you see fit. Do you wish to put
2 on a defense?

3 THE DEFENDANT: I didn't -- I wasn't
4 aware from last time I was in court that this day
5 in court was going to be a trial where I could call
6 anybody in my defense. No. I don't have anybody
7 for this particular case to call in my subpoena
8 anybody but, Your Honor, I have tried to subpoena
9 people before in my defense and you won't let me.

10 One of those cases was Lucille Campa's
11 where I was trying to speak of the same issues that
12 I am in trouble for today and you wouldn't let me
13 so what good does it do for me to call anybody
14 now?

15 THE COURT: Who do you have that you
16 wanted to call?

17 THE DEFENDANT: Nobody. I have nobody
18 to call because there was no witness. They're all
19 police of the Tribe. Who is going to defend me or
20 who is going to stand up for me? There was nobody
21 around so I don't have any witness to call.

22 THE COURT: Do you wish to testify?
23 If you do, you need to be sworn in. Do you want to
24 testify?

25 THE DEFENDANT: I have nothing to

1 language, or by the threatening, quarreling,
2 fighting, or offering or challenging to fight, or
3 in any other way or manner shall disturb the peace,
4 quiet, and decency of any person, street, or
5 neighborhood.

6 Mr. Phebus has admitted that he was,
7 quote, unquote, disorderly. Chief Belcher
8 testified that there were a number of people around
9 at the time Mr. Phebus came to the front door and
10 began yelling obscenities, and Chief Belcher gave
11 him an opportunity to calm down and asked him to
12 calm down and went outside with him and he
13 continued to yell obscenities related to the same
14 issues that we've been discussing over and over
15 again with Mr. Phebus.

16 This is an improper forum for him to
17 continue to bring up jurisdictional issues. It's
18 already been decided. So the Tribe would request,
19 suggest that the charge of disorderly conduct has
20 been proven and request the Court impose the
21 maximum 20-day sentence with credit for time served
22 for the one night that he did stay in jail. He has
23 three days' credit for that.

24 THE COURT: Mr. Phebus, do you want to
25 respond to that?

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1 testify about. What am I supposed to testify on?

2 THE COURT: Based on the statements
3 against you that you acted in a disorderly conduct
4 by exclaiming and yelling obscenities and
5 profanities, and the chief has testified that he
6 was in fear of your actions and that there were
7 other people present, so those are the issues.

8 THE DEFENDANT: I don't think -- I am
9 not harmful to anybody. I get loud and voice my
10 opinion.

11 THE COURT: If you want to testify,
12 you have to be sworn here.

13 THE DEFENDANT: No, I don't want to
14 testify because it don't do no good. It don't do
15 no good. If you don't recognize me as a Las Vegas
16 Paiute with the court order that I got, you're not
17 going to recognize me any other way. You're going
18 to do what you're going to do. It does no good.

19 THE COURT: Okay. Final arguments,
20 closing.

21 MR. MURCH: Your Honor, the tribal
22 code section 5-70-010, disorderly conduct
23 subsection B, no person shall disturb the peace or
24 quiet of any person, family, or neighborhood by
25 making loud noises, or by violent or offensive

1 THE DEFENDANT: Yeah. Once again
2 Mr. Murch is a representative of Las Vegas Paiute
3 Tribe, I wrote you a brief deal with this to the
4 court clerk. On the bottom I asked where I would
5 like a written explanation between you two what Las
6 Vegas Paiute Tribe is because my disorderly conduct
7 has a purpose which you completely ignore but yet
8 you sit up there biasly (sic) as a Las Vegas Paiute
9 tribal judge.

10 You don't give me any kind of respect
11 as a Paiute person, a Las Vegas Paiute person. You
12 rely over there. That's what you consider Las
13 Vegas Paiute. That's not true. When you use that
14 Bruce test against me to put me in jail for this
15 Tribe you established -- I have a chart I wanted to
16 show you.

17 THE COURT: Bring your chart in.

18 THE DEFENDANT: All right.

19 I just want to explain this. Let me
20 explain. My two grandparents come from the 1940
21 census roll. The Tribe's constitution and bylaw
22 bases this reservation and its enrollment on that
23 1940 census roll. When this Tribe did those
24 disenrollments, it discovered two things against
25 two individual families. Because the other family

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1 and their disenrollment has left my family and me
 2 where I am a victim of their actions because they
 3 are all now council members.
 4 When those people decided this
 5 disenrollment, they discovered errors in their own
 6 blood quantum. Okay. So those blood quantum
 7 council are now sitting on are illegal. The only
 8 one who is sitting up there with a legal blood
 9 quantum is Debra Fry because she used this court to
 10 prove that blood quantum.
 11 So when this Tribe allows you to use
 12 Bruce to convict me as an illegal, this is what you
 13 establish and this is what Mr. Murch has
 14 established from the last court where he said how
 15 Bruce is used because of blood quantum.
 16 My grandparents are 1940 enrollees.
 17 They are what makes me Tribe. When the Tribe took
 18 away my grandmother's blood quantum, they left my
 19 mother at five-sixteenths. Okay? My grandpa is
 20 three-fourths. That's where she gets -- she is
 21 three-eighths. That's where she gets her
 22 three-eighths is from that three-fourths.
 23 If my grandmother who is also written
 24 on that 1940 roll is half would raise my mom's
 25 blood quantum to five-sixteenths but now that the

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1 Tribe and the Bruce does not let her use that, I am
 2 at three-sixteenths, less than a quarter. Okay?
 3 This blood quantum for me is
 4 established because of that 1940 census role and
 5 because I have a grandfather on there to let that
 6 Bruce be used. Well, all these other people like
 7 Drew who you just put in jail -- I was on the
 8 enrollment committee two years before I got
 9 disenrolled. As soon as I gave up my position on
 10 the enrollment committee, 30 days later the Tribe
 11 kicked my family out.
 12 These blood quantum and these people
 13 I know intimately. This Tribe is small enough that
 14 I can do that. As an enrollment member when you
 15 arrest Drew, he does not have a grandparent. He is
 16 claiming a great great grandparent, one great great
 17 grandparent and that grandparent ain't even a full
 18 blood. She was half. You break that half down for
 19 Drew he is less than a thirty-second. When you
 20 give him --
 21 THE COURT: You need to stick with
 22 yourself. We're not trying other people here.
 23 THE DEFENDANT: Okay. Well, if you
 24 can use Bruce on me legally, how are you using it
 25 on him. If you're doing wrong for him, then give

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1 me a break because I'm trying to prove to you what
 2 Las Vegas Paiute is and if anything, I'm trying to
 3 prove to you what an Indian is but you don't give
 4 me that.
 5 You will put me in jail no matter
 6 what, if I'm Las Vegas Paiute or Indian or not.
 7 I'm not claiming to be Indian. You made that
 8 record for me when you made that certificate of
 9 Indian blood. What about my mom? You want me to
 10 create a court case. Why should I? You have one.
 11 It's Las Vegas Paiute.
 12 THE COURT: You're not dealing with
 13 the issue that we're dealing with here.
 14 THE DEFENDANT: I feel I am unfairly
 15 prosecuted by this Tribe. I feel that my
 16 disorderly conduct is fair. I feel what you're
 17 doing to me and letting me be prosecuted by this
 18 Tribe is unfair because of Bruce and because I have
 19 a court order which you're allowing them to -- the
 20 court order already says that the Tribe violated
 21 the constitution.
 22 What are you doing? Why are you doing
 23 this? I'm trying to prove a point.
 24 THE COURT: You're not proving the
 25 point by coming in and taking it out on the chief.

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1 THE DEFENDANT: How do I complain to
 2 the chief when he is a police -- he's got more
 3 right on this reservation than I do.
 4 THE COURT: That's because he's the
 5 chief of police.
 6 THE DEFENDANT: I'm the Paiute that
 7 made him chief of police for this reservation. I'm
 8 the Indian.
 9 THE COURT: No, you're not.
 10 THE DEFENDANT: When you use Bruce,
 11 yes, I am.
 12 THE COURT: No, you're not because
 13 you're not in the power that the council is and
 14 that's what you're missing here. You have a right
 15 to go in and object. You have a right to go and
 16 petition the Tribe about your situation, but you
 17 can't go in and cause problems with the chief.
 18 THE DEFENDANT: Okay.
 19 THE COURT: You're talking about civil
 20 disobedience on your part. You're saying that you
 21 have a right to cause a disorderly situation
 22 because you want to get your message across.
 23 Okay? He's not the person you need to go to and I
 24 told you this before. This Court ruled in your
 25 favor, an appellate court ruled in your favor. The

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1 council ruled against you. The council is the
 2 supreme court.
 3 I'm here on a misdemeanor criminal
 4 charge which you've admitted to that you were
 5 disorderly but you had a point you wanted to make.
 6 THE DEFENDANT: Mr. -- can I please.
 7 THE COURT: It's judge. Okay?
 8 THE DEFENDANT: Mr. Potter, I just go
 9 back to where you just mentioned the appellate
 10 court. I just made him a copy of those two
 11 appellate court decisions. I would like you to
 12 look at those.
 13 THE COURT: I have. I read them.
 14 Neither one of us are involved. You don't have an
 15 actual court case involving those issues.
 16 THE DEFENDANT: I haven't had to make
 17 one.
 18 THE COURT: You're here on a criminal
 19 case because you let your anger get the best of
 20 you. You tried to make a point where it didn't
 21 really matter because the chief can't do anything.
 22 The police officers can't do what you're asking
 23 them to do. The prosecutor can't do what you're
 24 asking and I can't as the judge. I cannot overrule
 25 the council.

Page 26

1 Your options -- and I told you this
 2 before. There's now another option. You can go
 3 down to federal district court and sue on a civil
 4 rights action if you feel you've been unjustly
 5 treated. This is the function of a criminal court
 6 right now. Okay? If I agreed with you a hundred
 7 percent, I can't do anything.
 8 THE DEFENDANT: But it's okay for you
 9 to prosecute me despite my civil case.
 10 THE COURT: No. I can prosecute you
 11 because you're a Native American and and you're
 12 subject to the jurisdiction because you live here
 13 on this Colony.
 14 THE DEFENDANT: But that's Las Vegas
 15 Paiute.
 16 THE COURT: It doesn't have anything
 17 to do with it.
 18 THE DEFENDANT: It does when you're
 19 sitting up here prosecuting me.
 20 THE COURT: No, it doesn't, because I
 21 prosecute or we prosecute in this court and we have
 22 jurisdiction over many different members of very
 23 different tribes. I mean we had Navajo in here.
 24 We had people not only living in Nevada but live in
 25 Arizona that come over here and have their business

1 in this Colony.
 2 THE DEFENDANT: They're Indian. I'm
 3 talking about Las Vegas Paiute.
 4 THE COURT: That's what the Bruce test
 5 talks about though.
 6 THE DEFENDANT: Are you using it
 7 fairly for them? Can I ask you something just
 8 because those council people are not in court for
 9 this Bruce test, could be used on them, is it fair
 10 for them to use that Bruce test and are they
 11 subject to be able to use it as council members
 12 because right now when you use that Bruce test
 13 against me and determine what my little blood
 14 quantum is because of this 1940 census roll those
 15 council members don't even have the blood quantum
 16 number. If they're illegal, so are you.
 17 THE COURT: No, it isn't. You're here
 18 on an issue as a Native American, not a Paiute.
 19 THE DEFENDANT: For your information
 20 at least I did this.
 21 THE COURT: I understand. What you
 22 need to do is what you're doing here now. You're
 23 talking to me and you're trying to convince me of
 24 your argument. You don't establish anything when
 25 you yell and scream at people.

Page 28

1 THE DEFENDANT: Yes, I understand, but
 2 13 years -- you've got to understand.
 3 THE COURT: I do understand.
 4 THE DEFENDANT: I am in the position
 5 of losing our home on this reservation and you're
 6 delaying us due process of law.
 7 THE COURT: No, I'm not. I'm giving
 8 you due process in a criminal case. That's all I
 9 can do.
 10 THE DEFENDANT: That's all you can do.
 11 THE COURT: That's all I can do is
 12 give you due process here. Okay?
 13 THE DEFENDANT: Okay.
 14 THE COURT: If you look at it from a
 15 standpoint of what we're looking at here is
 16 disorderly conduct where you disrupt things to try
 17 to make your point and then apparently, you know,
 18 you get angry and sometimes you can't deal with it
 19 and therefore you become violent and that's why
 20 people are afraid of you.
 21 THE DEFENDANT: Okay. Other than
 22 today and this disorderly conduct case, do I have
 23 the right to ask you and get your opinion legally
 24 through this court if that decision of the Tribe
 25 where they believe they have the right to review

PHEBUS

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1 their own orders is being used correctly. Do I
 2 have the right to ask you that for your opinion of
 3 that?
 4 THE COURT: No. Because I'm not
 5 sitting in judgment of the council in your case.
 6 THE DEFENDANT: I know. Other than
 7 this case, do I have the right to write the Court
 8 and ask you that?
 9 THE COURT: No. You haven't. I can't
 10 do that. I only can deal with actual cases before
 11 me.
 12 THE DEFENDANT: So I can't write and
 13 ask you.
 14 THE COURT: No. I'm not here as an
 15 attorney to give you advice. I'm sitting here as a
 16 judge.
 17 THE DEFENDANT: Okay. Again, once
 18 again with my disenrollment case that is an open
 19 pending case. When you let these guys use the
 20 Bruce test against me, it's no longer open because
 21 you concluded by letting them make a blood quantum
 22 for me. Aren't they in violation? Aren't you?
 23 THE COURT: No.
 24 THE DEFENDANT: Who is Tribe, you or
 25 me?

Page 30

1 THE COURT: It doesn't matter.
 2 THE DEFENDANT: It does matter. You
 3 use our name in vane.
 4 THE COURT: No, it doesn't matter for
 5 the jurisdiction of this criminal court.
 6 THE DEFENDANT: Okay. I understand.
 7 THE COURT: I'm allowed to when
 8 Navajos come in or -- we had one out of Window Rock
 9 that was on calendar today.
 10 THE DEFENDANT: But do you think
 11 that's fair when this disenrollment questions what
 12 a Las Vegas Paiute is. Do you think that's fair
 13 you as a judge to do that?
 14 THE COURT: It isn't a question of
 15 fairness. Okay? That's what I'm saying. You're
 16 asking me were you treated fairly in this court.
 17 THE DEFENDANT: I'm asking what a Las
 18 Vegas Paiute is.
 19 THE COURT: That isn't the issue.
 20 THE DEFENDANT: That's right. I
 21 understand. I have no more to say.
 22 THE COURT: All right. I'm going to
 23 find you guilty of the disorderly conduct and I'd
 24 like to address -- Mr. Murch has already told me
 25 what he thinks you should receive for it. What do

Page 31

1 you think should be the punishment? That's really
 2 the issue here.
 3 THE DEFENDANT: I don't know.
 4 Because, you know, when I leave this courtroom
 5 today, it's going to go back. It's a rotating
 6 cycle. I'm trying to convince you of this pattern
 7 and all these other things but I don't know. I
 8 don't know how to calm my anger because I'm --
 9 THE COURT: Well, you apologized. You
 10 did apologize which shows some remorse. I mean you
 11 have to, I think if you have valid arguments they
 12 have to be addressed to the people that can deal
 13 with them.
 14 THE DEFENDANT: But they won't let
 15 me. And then --
 16 THE COURT: So you're in a box where
 17 you have to go somewhere else to make your
 18 arguments then. Okay?
 19 THE DEFENDANT: Okay. Thank you,
 20 that's good.
 21 THE COURT: You need to go to a
 22 courthouse that has jurisdiction over the issue
 23 you're talking about.
 24 THE DEFENDANT: Do you understand what
 25 I'm talking about?

Page 32

1 THE COURT: Yes.
 2 THE DEFENDANT: Okay. I can deal with
 3 that.
 4 THE COURT: I'm going to give you
 5 credit for time served. Okay?
 6 THE DEFENDANT: Thank you.
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PHEBUS

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1 REPORTER'S CERTIFICATE

2

3 STATE OF NEVADA)

4) ss

5 COUNTY OF CLARK)

6

7 I, Cheryl Gardner, RMR-RPR, CCR 230,
8 do hereby certify that I took down in Stenotype all
9 of the proceedings had in the before-entitled
10 matter at the time and place indicated and that
11 thereafter said shorthand notes were transcribed
12 into typewriting by me and that the foregoing
13 transcript constitutes a full, true, and accurate
14 record of the proceedings had.

15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and affixed my official seal of office
17 in the County of Clark, State of Nevada, this 31st
18 day of October, 2012.

19

20

21

22

23 /s/ Cheryl Gardner

24 CHERYL GARDNER, RMR-RPR, CCR 230

25

EXHIBIT 3

EXHIBIT 3

CR11-005 10/19/11

1

CASE NO. CR11-005

LAS VEGAS PAIUTE TRIBAL COURT

-ooo-

COPY

LAS VEGAS PAIUTE TRIBE,)	
)	
Plaintiff,)	REPORTER'S TRANSCRIPT
)	
vs.)	OF
)	
CHRISTOPHER PHEBUS,)	STATUS CHECK
)	
Defendant.)	

BEFORE THE HON. CAL J. POTTER, III, TRIBAL JUDGE

WEDNESDAY, OCTOBER 19, 2011

3:32 p.m.

APPEARANCES:

For the Tribe: PATRICK J. MURCH, ESQ.

For the Defendant: In Proper Person

Reported by: CHERYL GARDNER, RMR-RPR
CCR No. 230

CR11-005 10/19/11

2

1 LAS VEGAS, CLARK COUNTY, NV, WED., OCTOBER 19, 2011

2 3:32 p.m.

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: The next matter is
6 CR11-0005, Tribe versus Chris Phebus.

7 MR. MURCH: Patrick Murch and Rory Kay
8 on behalf of the Tribe.

9 THE COURT: Can you state your
10 appearance, Mr. Phebus.

11 MR. PHEBUS: Chris Phebus on behalf of
12 myself.

13 THE COURT: All right. This is the
14 time set pursuant to an order to show cause why
15 sentence should not be imposed in this matter. I
16 requested the tribe brief the jurisdictional
17 elements of the issues that Mr. Phebus had brought
18 up in this matter and I received a copy of the
19 brief.

20 Have you received a copy?

21 MR. PHEBUS: Uh-huh.

22 THE COURT: Mr. Murch, I'll go ahead
23 and allow you to make your representations to the
24 Court. You can be seated if you want, Chris.

25 MR. MURCH: Your Honor, the brief lays

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3

1 out the Bruce test requirements for determining
2 whether Mr. Phebus falls under the jurisdiction of
3 this Court. I'm not going to read the brief to the
4 Court, but if the Court has any questions, I'd be
5 happy to answer them.

6 But in essence Mr. Phebus has a
7 sufficient amount of Indian blood and he has
8 received benefits through the Tribe and through the
9 Tribe's recognition of him as an Indian so the
10 argument that the Tribe doesn't have jurisdiction
11 over Mr. Phebus because he's not a member -- he's
12 an Indian but he's not a Paiute -- can't continue
13 to be asserted in the courts.

14 The argument that because the Court
15 doesn't have jurisdiction he doesn't have to do his
16 community service and he's not subject to the rules
17 of the Court that can't continue, and the Tribe is
18 asking the Court recognize that Mr. Phebus is
19 subject to the jurisdiction and that the Court
20 enter an order prohibiting Mr. Phebus from
21 asserting that same argument.

22 THE COURT: And do you know the
23 sentence that you're seeking on this?

24 MR. MURCH: It's the remaining
25 sentence. I can look it up. It's the remaining

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4

1 sentence on the --

2 MR. PHEBUS: 66 days.

3 MR. MURCH: It's been months so I --

4 THE COURT: My calculations looking at
5 my note it was 66 days that he had as a sentence
6 that had been suspended.

7 MR. MURCH: I will accept the Court
8 and Mr. Phebus's representation. They match so
9 I'll accept 60 days as the time.

10 THE COURT: All right. Mr. Phebus,
11 have you had a chance to read the brief?

12 MR. PHEBUS: Yeah.

13 THE COURT: And do you have any
14 position?

15 MR. PHEBUS: Well, yeah, I'd like to
16 ask some questions because he's saying right now
17 that -- I guess when I read this brief I take it
18 that the Tribe, the Bruce test benefits the Tribe
19 in both ways. Either I'm not a member or I'm just
20 an Indian.

21 What choice was it ever to be mine
22 because I never had a choice. It's always been law
23 enforcement's choice to put me in jail as an
24 Indian. The only choice I had was to commit the
25 crime so when he uses that the Tribe has the right

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5

1 to prosecute me as an Indian, well, I don't claim
2 to be an Indian. I claim to be a Las Vegas
3 Paiute.

4 I have a court order. If this Court
5 can enforce its court orders, then how come a court
6 order for my membership can't be enforced also? If
7 I'm going to be taken to jail as an Indian, then
8 take me to jail as a Las Vegas Paiute like the
9 Court says I am.

10 THE COURT: And the reference that
11 you're making, I had some questions for you.

12 MR. PHEBUS: I want to ask you one
13 more thing. When this -- when I was allowed to ask
14 how the Tribe has jurisdiction over me, if I would
15 have known you was going to let me ask the
16 question, I wouldn't have asked this because you
17 already put me in jail.

18 You should have known better
19 yourself. You put me in jail under this Bruce test
20 anyway. You delayed my family's interest for
21 30 days just for this Court just to prove this.
22 The question I should have asked you was I gave you
23 minutes over five months ago about the Tribe
24 refusing the court orders.

25 Well, those minutes explain to you

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6

1 that you have the authority assert those court
2 orders because they don't have the right to review
3 them. Now I'm sitting in here fighting over
4 whether or not I can be prosecuted under this Bruce
5 test or not.

6 Well, if I have to obey court orders
7 and I don't and I go to jail, what about those
8 council people across the street that you consider
9 Las Vegas Paiute.

10 THE COURT: I have some questions for
11 you. You were enrolled in the Tribe.

12 MR. PHEBUS: That's right.

13 THE COURT: And what years were you
14 enrolled?

15 MR. PHEBUS: From 1983 to 1999. Our
16 Tribe did not become a federally recognized tribe
17 until 1983 when I became enrolled and I've got the
18 paperwork to support that, those minutes.

19 THE COURT: And I've looked at the
20 minutes that you submitted.

21 MR. PHEBUS: I know but if I can
22 explain, those minutes -- when you read it, it
23 lists where some people were enrolled and then
24 there was another group. Well, I got the paperwork
25 to show you both of those groups and I was the

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7

1 first one to be enrolled.

2 THE COURT: And you held yourself out
3 as a Paiute during the period of 1983 to 1999.

4 MR. PHEBUS: Yes, sir, a Las Vegas
5 Paiute.

6 THE COURT: And you accepted
7 assistance. I mean did you receive Indian health
8 services?

9 MR. PHEBUS: Well, this is another
10 question. I was just having to go over some law
11 and some court cases now. When I answered that
12 question that I accepted health assistance, how can
13 the Court use that against me especially when I'm
14 going to jail and I'm being housed in jail.

15 I understand that law enforcement
16 having or the Court being able to maintain my
17 medical records for that purpose but how can they
18 use my medical or me going to Equity Health against
19 me in this situation right now because this Court
20 does not pay for my medical health. Equity Health
21 does and this ain't nothing to do with this court.

22 THE COURT: But you did receive the
23 health services during that period.

24 MR. PHEBUS: Yes, I have.

25 THE COURT: And then you had made

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8

1 representations last month dealing with the Bureau
2 of Indian Affairs, that you'd been incarcerated in
3 Peach Springs.

4 MR. PHEBUS: That's right, but this
5 last time I was incarcerated at Peach Springs I
6 went there just as an Indian. Before when I went
7 to jail at Peach Springs I went as a Las Vegas
8 Paiute tribal member and this second time I went I
9 wasn't even supposed to be put down there.

10 THE COURT: You were brought back.

11 MR. PHEBUS: I was brought back to
12 North Las Vegas and then after I wrote the BIA and
13 told them my situation and what had happened there,
14 they ordered me to come back. I do not have the
15 paperwork to prove their order because it was done
16 through the jail, a guy at the jail but he brought
17 me back to North Las Vegas and he told me that he
18 was given orders by the superintendent in Arizona
19 that the BIA does not have jurisdiction over me
20 because I am just an Indian.

21 I have to be a federally recognized
22 Indian to be in their jail. After I realized that
23 somehow law enforcement was able to get me sent
24 back to Peach Springs despite what their own
25 attorneys had told them.

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9

1 THE COURT: All right. And did you
2 also attend these language classes?

3 MR. PHEBUS: Those language classes
4 anybody can go to them. All they have to look up
5 is Learning the Numu with Leroy Howl (phonetic) dot
6 com and you can learn it on the computer. I did
7 not go to language classes. I don't sign no
8 statement saying I do and their Tribe can't prove I
9 do.

10 THE COURT: That's your answer that
11 you haven't attended language classes.

12 MR. PHEBUS: That's right.

13 THE COURT: How about the dance
14 festivals?

15 MR. PHEBUS: I do not go to powwows
16 because I don't believe in them.

17 THE COURT: Have you ever been to a
18 powwow?

19 MR. PHEBUS: Yes, I have, but I don't
20 participate in them.

21 THE COURT: During the 1983 to 1999
22 period?

23 MR. PHEBUS: Yes, as a tribal member.
24 I represented our Tribe.

25 THE COURT: Okay. And do you have

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10

1 anything else to speak about in terms of
2 mitigation?

3 MR. PHEBUS: Yes. This Bruce test I
4 don't understand because in his relevant facts in
5 No. 2 he states under this case United States
6 versus Lara where the Tribe has inherent
7 self-government powers, well, does that mean
8 sovereign immunity, would that be considered
9 sovereign immunity where the tribe has inherent
10 self-government powers? That would be considered
11 sovereign immunity, correct?

12 Under United States versus Lara the
13 Tribe has sovereign immunity and the right to
14 exercise their criminal or jurisdiction over
15 nonmember Indians. Under that court case sovereign
16 immunity, well, I don't understand that because
17 when I got to court and I got reinstated as a
18 tribal member when we was -- because of what the
19 Tribe did by disentraining how has the Tribe lost
20 their sovereign immunity. How does the Bruce test
21 apply to me when the Tribe has no sovereign
22 immunity against me? They wavered. (sic) that.

23 MR. GONZALES: Well, that isn't the
24 test that you're stating.

25 MR. PHEBUS: I know but under this

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11

1 Bruce test, yes.

2 THE COURT: No, under the Bruce test
3 the factors that I've asked you and you've answered
4 are the basis for finding that the Court has
5 jurisdiction over you.

6 MR. PHEBUS: Because I can't.

7 THE COURT: Because of the
8 representations -- we have jurisdiction over you as
9 an Indian, as a Native American. You don't have to
10 be a member of the Tribe which is what you've been
11 arguing.

12 MR. PHEBUS: But don't I have the
13 right to choose what I am because it's been choosed
14 (sic) for me.

15 THE COURT: It's been chosen by the --
16 it's by Congress is the one who made the
17 determination.

18 MR. PHEBUS: Can I show you something,
19 a document 'cause I want to explain something.

20 THE COURT: Have you presented it to
21 the Tribe?

22 MR. PHEBUS: I'm scared to give my
23 paperwork to the Tribe because it can be turned
24 around and used some other way. If you don't see
25 it first, I'm not going to give them their own

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12

1 record because they have themselves, law
2 enforcement has it and this Court has it, I'm not
3 going to give it to them again.

4 THE COURT: What we have to do,
5 Mr. Phebus, is try to be fair to both sides.
6 That's why I asked to put this in writing.

7 MR. PHEBUS: No, they don't. If I may
8 mention there was a situation in disenrollment when
9 it first happened. There was two families, my
10 family and another family. One of those people was
11 trespassed by the tribal council without any court
12 orders so when law enforcement went to go apprehend
13 them, they apprehended them up at Equity Health
14 taking her child to go see the doctor.

15 When they arrested that person for
16 trespassing, they -- instead of taking them to
17 North Las Vegas and booking them in as an Indian
18 like they do me as a disenrolled person, they took
19 her to the county and booked her in as a white
20 person.

21 She had a choice but yet they don't
22 give me a choice. They take me to North Las Vegas
23 and book me as an Indian. This woman's sitting in
24 the council. I've got the arrest record and
25 everything.

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13

1 THE COURT: I understand. Do you have
2 anything else you want to bring up in terms of
3 mitigation?

4 MR. PHEBUS: I don't understand how
5 this Tribe, is it fair to you that they can use
6 this Bruce test in both ways. If I'm not a Las
7 Vegas Paiute Indian, then is it fair to use this
8 Bruce test to prosecute me as an Indian.

9 THE COURT: Yes. That's what we're
10 making a finding here. The issue as the law as has
11 to be applied by the Court is governed by not only
12 the Bruce test but there's another case cited in
13 here in the brief that I've reviewed, United States
14 of America versus Maggi which is a 2010 case March
15 16th.

16 MR. PHEBUS: In the Bruce test.

17 THE COURT: No. It applies to the
18 Bruce test again and it's cited in the brief which
19 is probably the most current. It's footnote 9. It
20 says it's important to note the Court only consider
21 native blood from a federally-recognized tribe and
22 also the defendant may meet this test by
23 showing Indian blood from many federally-recognized
24 tribes. Accordingly four-64ths Paiute blood . . .

25 In the representations made here is

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14

1 that based upon the sufficiency of the blood, the
2 Tribe had recognized you in the past but doesn't
3 currently recognize you for Paiute purposes so the
4 Court adopts those findings and what I'm asking you
5 is there any mitigation, you know, you kind of took
6 a stance that you weren't going to do the requested
7 community service and that you were going to take
8 these issues.

9 I'm just asking you before I make the
10 decision if you have any type of mitigation meaning
11 do you have anything to say on behalf of yourself
12 to deal with the 66 days that have been -- you've
13 previously been sentenced to 60 days. It was
14 suspended. We're here to impose that sentence on
15 you now.

16 MR. PHEBUS: So all the paperwork I've
17 given you before has nothing to do with what you're
18 going to do to me now.

19 THE COURT: We're finding we have
20 jurisdiction over you again.

21 MR. PHEBUS: So you're claiming you do
22 have jurisdiction over me.

23 THE COURT: Yes. I'm making a finding
24 I have jurisdiction.

25 MR. PHEBUS: What about the fact we

CR11-005 10/19/11

15

1 have a council member that was disenrolled.

2 THE COURT: That isn't before me.

3 MR. PHEBUS: That's the way I'm
4 prosecuted in this court. It effects you, the way
5 you conceive a Las Vegas Paiute because I don't
6 know what you're calling a Las Vegas Paiute. It
7 sure can't be them.

8 THE COURT: It doesn't have to be what
9 we're calling. That's what I'm telling you.

10 MR. PHEBUS: It can just be an Indian.

11 THE COURT: Yes.

12 MR. PHEBUS: When is it my choice to
13 be an Indian?

14 THE COURT: Well, apparently it was
15 your choice all along.

16 MR. PHEBUS: I committed the crime was
17 my choice. It was never my choice to decide my
18 ethnicity. You people have been doing it for me.
19 He has been doing it for me. He has even decided
20 my mom's blood quantum and she didn't give him
21 permission to. I can't approach that because
22 you're going to put me in jail for not doing my
23 community service. That's a bunch of bull.

24 THE COURT: Is that your mitigation?

25 MR. PHEBUS: I'm not doing the

CR11-005 10/19/11

16

1 community service because I'm trying to prove a
2 point here.

3 THE COURT: I understand. That's what
4 I'm asking.

5 MR. PHEBUS: That's my mitigation.

6 THE COURT: You're doing this to prove
7 a point.

8 MR. PHEBUS: If that's the way you're
9 going to put -- I don't want to -- I feel that you
10 are an attorney. You're going --

11 THE COURT: I'm your judge.

12 MR. PHEBUS: You're going to put me in
13 a position where I'm going to hang myself. I'm not
14 trying to do that. Okay? You know, I don't know.
15 I just don't get what you're doing here.

16 THE COURT: Do you have anything else
17 you want to bring before the Court?

18 MR. PHEBUS: No, I don't.

19 THE COURT: The Court orders the
20 sentence of 60 days will be imposed. You'll be
21 turned over to the custody of the chief of police
22 at this time. Stand up.

23 MR. PHEBUS: You're a sorry judge.
24 You need to remove yourself not like Greg Koppe at
25 his own. Just remove yourself. You're not needed

CR11-005 10/19/11

17

1 here. You kiss ass.

2 CHIEF BELCHER: (Inaudible).

3 MR. PHEBUS: You shut up. All you
4 have done is -- you piece of shit. I could just
5 kick you in the face, you ugly asshole. Don't you
6 touch me. You are so wrong. You are so wrong.

7 You need to remove yourself from this
8 reservation or I'll run you off of here.

9 CHIEF BELCHER: We'll file for
10 threats.

11 MR. PHEBUS: You shut up, Belcher, you
12 sorry ass, you piece of shit.

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CR11-005 10/19/11

18

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Cheryl Gardner, RMR-RPR, CCR 230,
do hereby certify that I took down in Stenotype all
of the proceedings had in the before-entitled
matter at the time and place indicated and that
thereafter said shorthand notes were transcribed
into typewriting by me and that the foregoing
transcript constitutes a full, true, and accurate
record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my official seal of office
in the County of Clark, State of Nevada, this 20th
day of October, 2011.



CHERYL GARDNER, RMR-RPR, CCR 230

EXHIBIT 4

EXHIBIT 4



ORIGINAL

Filed in L.V. Paiute Court

Date: 10/28/11 Time: 0845

Court Clerk: RB

LAS VEGAS PAIUTE TRIBAL COURT

ORDER OF REMAND

IN THE MATTER OF:

LAS VEGAS PAIUTE TRIBE
Plaintiff

vs.

CHRISTOPHER W. PHEBUS
DOB: 07-31-69
Defendant

CASE NO. CR11-004
CASE NO. CR11-005

This matter came before the Las Vegas Paiute Tribal Court on Wednesday, October 19, 2011. Defendant Christopher Phebus (Defendant) appeared *pro se*. The Las Vegas Paiute Tribe (the Tribe) was represented by Tribal Prosecutor Patrick Murch.

FINDINGS OF FACT:

1. On January 31, 2011, the Court entered a plea of not guilty on Defendant's behalf on the following charges:
 - a. Las Vegas Paiute Tribal Code 5-70-010: Disorderly Conduct (CR11-004).
 - b. NRS 200.571: Harassment and Stalking (CR11-005).
2. After a trial on February 17, 2011, the Court found Defendant guilty of the following:
 - a. Las Vegas Paiute Tribal Code 5-70-010 – Disorderly Conduct (CR11-004).

b. NRS 200.571 – Harassment and Stalking (CR11-005).

3. On February 17, 2011, the Court sentenced the Defendant to the following:

a. Violation of Tribal Code § 5-70-010 – Disorderly Conduct (CR11-004): \$2,000 fine, with a credit of \$100.00, payable by community service at the rate of \$100.00 per eight hours worked AND incarceration for 20 days at the City of North Las Vegas Detention Center, with credit for time served of 21 days.

b. Violation of NRS 200.571 – Harassment and Stalking (CR11-005): \$2,500 fine, with a credit for \$100.00, payable by community service at the rate of \$100.00 per eight hours worked.

4. On March 31, 2011, the Court entered an order requiring Defendant to show cause why he should not be held in contempt for failing to comply with the community service requirements that were imposed in connection with the above-referenced convictions.

5. On April 21, 2011, the Court held a hearing on the order to show cause and found Defendant to be in contempt of court. The Court entered an order (the April 21 Order) sentencing Defendant to 60 days in jail, suspended. The Court also suspended Defendant's remaining six days of jail time on the disorderly conduct conviction in Case No. CR11-004. In addition, the Court ordered Defendant to attend anger management classes and complete the remainder of his community service at a rate of no less than 15 hours per week.

6. On May 19, 2011, the Court conducted a status check hearing to assess Defendant's progress in fulfilling his community service hours and anger management classes. The Court determined that Defendant was satisfactorily completing his community service hours, but that he had failed to complete his anger management classes.

7. On June 16, 2011, the Court conducted another status check hearing, wherein it determined that Defendant was satisfactorily completing his community service hours, but that he had failed to complete his anger management classes.

8. On July 20, 2011, the Court conducted another status check hearing, wherein it determined that Defendant had not made satisfactory progress on his community service hours, and also that he had failed to complete his anger management classes.

9. On September 14, 2011, the Court conducted another status check hearing, wherein it determined that Defendant had not made satisfactory progress on his community service hours, and also that he had failed to complete his anger management classes. The Court entered an order requiring Defendant to show cause why he had not complied with the February 17 order.

10. On October 19, 2011, the Court held a hearing on the order to show cause. The Court also heard arguments from Defendant and the Tribe regarding the Court's jurisdiction over Defendant.

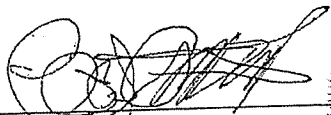
11. Based on the arguments and evidence presented by Defendant and the Tribe, the Court finds that Defendant is in contempt for violating the April 21 Order.

12. In addition, the Court finds that although Defendant is not a member of the Tribe, he is an Indian under the test enunciated by the Ninth Circuit Court of Appeals in United States v. Bruce, 394 F.3d 1215 (9th Cir. 2005).

THEREFORE, IT IS ORDERED:

1. The Court has jurisdiction over Defendant pursuant to Bruce.
2. Defendant shall serve the remainder of the suspended sentence (66 days) that was imposed pursuant to the April 21 Order.
3. Defendant's current release date is December 23, 2011.

SO ORDERED this 27 day of October 2011.



Cal J. Potter III
Las Vegas Paiute Tribal Judge



Copies distributed to:
Patrick Murch, Las Vegas Paiute Tribal Prosecutor
Las Vegas Paiute Tribal Police Department
Bureau of Indian Affairs Detention

EXHIBIT 5

EXHIBIT 5

CASE NO. CR12-008

COPY

LAS VEGAS PAIUTE TRIBE,
Plaintiff,

vs.

CHRISTOPHER PHEBUS,

Defendant.

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE HON. CAL J. POITER, III, TRIBAL JUDGE

THURSDAY, DECEMBER 27, 2012

3:00 P.M.

APPEARANCES:

For the Tribe: PATRICK J. MURCH

For the Defendant: PROPER PERSON

Reported by: Gerri De Lucca, R.M.R., C.C.R. No. 82

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 27, 2012

* * * * *

THE COURT: The next matter is CR12-008, the Tribe v. Christopher Phebus. The charge is improper influence on official matters. This is the time set for the trial.

The record will reflect Mr. Murch is here representing the Tribe, and Mr. Phebus is here out of custody.

Are the parties ready to proceed?

MR. MURCH: The Tribe's ready to proceed, your Honor.

THE COURT: Mr. Phebus, are you ready to proceed?

MR. PHEBUS: Yes.

MR. MURCH: The Tribe calls Chief Belcher.

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DON BELCHER, having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. MURCH:

Q. Good afternoon, Chief Belcher.

A. Good afternoon.

Q. State your name for the record.

A. Don Belcher.

Q. And are you employed by the tribal police?

A. Yes, I am.

Q. In what capacity?

A. I'm a chief with the Las Vegas Paiute Police Department.

Q. Do you know Christopher Phebus?

A. Yes, I do.

Q. Could you point Mr. Phebus out to us.

A. Yes. He's sitting at the table on the right.

THE COURT: The record will reflect that Mr. Phebus has been identified by Chief Belcher.

BY MR. MURCH:

Q. Were you working on the morning of

5
 1 November 6, 2012?
 2 A. I was.
 3 Q. And were you involved in an incident with
 4 Mr. Phebus?
 5 A. Yes.
 6 Q. Can you describe that incident to me?
 7 A. Yes. It was around 10:00 and Mr. Phebus
 8 had come into the front entry of the police
 9 department and had requested to talk to me and I
 10 stepped out to speak with him and he immediately told
 11 me that he wanted a court order from Dave Colvin.
 12 And I told him there was no way
 13 that I could provide a court order of any kind and
 14 any paperwork whatsoever, that he would have to go
 15 through Colvin or go through an attorney to get that
 16 type of paperwork, that I didn't have access to it.
 17 Q. Who's Dave Colvin?
 18 A. He's the Las Vegas Paiute Tribe's
 19 attorney.
 20 Q. Do you know Mr. Colvin?
 21 A. I do.
 22 Q. Do you have any professional relationship
 23 with him?
 24 A. I do.
 25 Q. Do you have a personal relationship with

6
 1 him?
 2 A. No.
 3 Q. So Mr. Phebus asked you to get a court
 4 order from Mr. Colvin, and what happened after that?
 5 A. When I told him no, that I couldn't do
 6 that, he turned to me and he got loud and he was
 7 telling me that I kicked his family in the ass. And
 8 I could tell at that time that Chris was getting out
 9 of line.
 10 I told him, calm down, and he
 11 said, I'll tell you what, he said, if I go up to the
 12 health clinic and my Certificate of Indian Blood's in
 13 the file up there, I'm going to get it out, I'm going
 14 to wrap it in a rock, and I'm going to throw it
 15 through your office window.
 16 And I said, Chris, I said, you
 17 don't need to be threatening me. I said, calm down.
 18 I said, you need to leave the facility right now.
 19 And he turned around and when he did I shut the door
 20 and went back in and he left.
 21 Q. Do you have the ability to contact
 22 Mr. Colvin?
 23 A. Yes.
 24 Q. Could you, if you wanted to, could you
 25 call him and ask him for a court order?

7
 1 A. I could.
 2 Q. Then are you aware of an incident that
 3 happened the next day after Mr. Phebus was in the
 4 office and threatened to throw a rock through the
 5 window?
 6 A. Yes, I'm aware that it occurred.
 7 Q. What's your understanding of that
 8 incident?
 9 A. Well, what I understand is that Chris
 10 Phebus brought a boulder or a big rock inside the
 11 facility. Well, I know that he did. And he had it
 12 wrapped in paper around it. And he told the
 13 dispatcher, I've got this for Chief Belcher when he
 14 returns. Look what I've got for him, indicating that
 15 he was going to throw the rock through the window,
 16 what I took it to mean.
 17 Q. And did you have any reaction to that in
 18 terms of your behavior in the police station after
 19 that incident occurred?
 20 A. Yes, I did. I had to kind of change the
 21 way I was doing business in the office because
 22 anybody that come in, I had to make them aware that,
 23 hey, I could have a boulder come through my window at
 24 any time because I had someone threaten to throw one
 25 through the window. And I was advising them of that

8
 1 for their sake because it is glass and I wanted them
 2 to be aware that I had been threatened.
 3 Q. And where is your office in this
 4 building?
 5 A. It's at the front just as you come in the
 6 door on the left.
 7 Q. And where is the window in the office,
 8 which way does it face?
 9 A. It faces east, and it's right along the
 10 building right by my desk.
 11 Q. Is it something that somebody would be
 12 able to access from the front of the building?
 13 A. Yes.
 14 MR. MURCH: I don't have any more
 15 questions for Chief Belcher.
 16 THE COURT: Cross-examination,
 17 Mr. Phebus.
 18
 19 CROSS-EXAMINATION
 20 BY MR. PHEBUS:
 21 Q. Officer Belcher, if you felt threatened
 22 by me when I came in and said what I was going to do
 23 to you the very first time, like any other time, why
 24 didn't you just arrest me and charge me for something
 25 like harassment or something like that; why didn't

9

1 you just do that then?

2 A. Well, I wasn't here at the time that you

3 brought the rock into the --

4 Q. I know, but there was other officers that

5 were here the same time that the next incident

6 happened. They didn't do it then either. You wanted

7 to wait till -- I don't want to have to ask them,

8 because I don't have that kind of relationship,

9 employee, you know, I don't have that.

10 All right. And so the incident

11 about the Certificate of Indian Blood, do you know

12 why I'm angry about that?

13 MR. MURCH: Objection, your Honor.

14 MR. PHEBUS: No objection. You got to

15 hear this, your Honor.

16 THE COURT: I think it's relevant. Go

17 ahead.

18 MR. PHEBUS: It does affect me. All this

19 time I've been coming to court with Greg Koppe and

20 his five years of being a judge here, he always said

21 that these civil matters, that certificate, my blood

22 quantum never had anything to do with civil matters,

23 with my criminal matters it does. My anger --

24 THE COURT: At this point you have to ask

25 questions.

10

1 MR. PHEBUS: This is for your

2 information. I'm going to. I have to reflect on

3 this in order to get what I'm going to ask him so you

4 can put two together.

5 THE COURT: You'll get an opportunity to

6 make a statement or testify, but right now we're

7 questioning the chief, so --

8

9 (Overlapping speakers)

10

11 BY MR. PHEBUS:

12 Q. Do you know why I'm upset with that

13 Certificate of Indian Blood?

14 A. Yes, I do.

15 Q. And then you think I'm going to throw a

16 rock through your window? If I don't have a way to

17 complain about this -- wait.

18 I came over here to file or ask

19 for an incident report because this Certificate of

20 Indian Blood affected me at Equity Health. When I

21 went up to look at my records, my medical records, I

22 had requested all my information on my native status.

23 Well, the information that I had

24 in there before is missing. Now, wait. Because I

25 was sent to jail previously by this man, okay, and

11

1 his paperwork, he had made that Certificate of Indian

2 Blood, which ended up in my medical file that had

3 nothing to do with my court case or my criminal

4 matters in this court, but, yes, it does affect me.

5 I'm angry because I don't get the

6 opportunity to correct it through him, through this

7 Court or across the street, and I get persecuted for

8 being an Indian, but yet you can sit up there and say

9 Las Vegas Paiute, that's the Las Vegas Paiute.

10 THE COURT: Do you have any other

11 questions?

12 MR. PHEBUS: Why do you put me at the

13 last when I can't say it in front of all these other

14 people, because when do you this --

15 THE COURT: Because yours takes longer.

16 MR. PHEBUS: When you do this against me

17 and you let this man make that Certificate of Indian

18 Blood and you do not acknowledge it or address it,

19 you affect us. For instance, child welfare cases.

20 When my brother and his kids want --

21 MR. MURCH: Your Honor, if I could make

22 an objection for the record.

23 MR. PHEBUS: No, no, no, no, no.

24 THE COURT: Okay.

25 MR. PHEBUS: Now you're going to send me

12

1 to jail, you're going to --

2 THE COURT: Mr. Phebus, you're going to

3 get an opportunity to explain all that. All I'm

4 asking you is to do it in an orderly fashion, okay?

5 MR. PHEBUS: I'm not an attorney.

6 THE COURT: That's why I'm trying to help

7 you here, okay? I'm trying to explain to you --

8 MR. PHEBUS: Now you're going to try to

9 help me.

10 THE COURT: Do you have any other

11 questions of the chief?

12 BY MR. PHEBUS:

13 Q. How do I resolve my Certificate of Indian

14 Blood if I cannot get cooperation through your police

15 to get an incident report so I can file a complaint,

16 how do I resolve it?

17 A. The question that you're asking me is --

18 I'm not sure what you're trying to resolve, but --

19 whether you're trying to eliminate it or trying to

20 get how it came about or what's the question?

21 Q. Yeah, I did ask your officer that.

22 A. No, no, what are you asking me? I want

23 you to ask me.

24 Q. When I asked for this, to get this

25 incident report, that there was questions I had

13

1 asked, just what you did, who did this, where did my
2 paperwork go, can I get rid of it. And then I was
3 directed to go to the -- from Equity Health and the
4 people there to go to the Council over here, but when
5 I go over there, I'm turned down, it causes a
6 problem.

7 When that problem arises, you guys
8 come and arrest me. It's been that way since our
9 disenrollment and I don't know what to do.

10 THE COURT: Let me ask the questions then
11 that I think would be pertinent here.

12 Chief, do you have -- did you have
13 an understanding of a court order from Dave Colvin
14 being in existence?

15 THE WITNESS: No. He's asking for one.
16 I don't know what it says.

17 MR. PHEBUS: It's a court order because
18 when we were disenrolled, that chairman at that time
19 disenrolled us, wanted to get rid of my mom, my aunt,
20 my two aunts, and then my mom and them guys, my mom
21 and her two sisters had hired an attorney for their
22 case alone and Colvin ruled that their enrollment
23 files were to remain sealed. So he's allowed to get
24 a certificate and put me in jail.

25 THE WITNESS: He wants to know how it

15

1 permission to.

2 THE COURT: Wait a minute. You were
3 asking about the chief contacting Dave Colvin and
4 he's just testified that he could not contact him
5 because it was a legal matter with counsel of record.

6 Why do you believe that the chief
7 is the individual to contact Colvin?

8 MR. PHEBUS: I don't believe he needs to.
9 I'm accusing him about the Certificate of Indian
10 Blood and making a false document to put me in jail.
11 That's why I came down to threaten him with that
12 rock, because I was angry over it, because I cannot
13 resolve that issue because of the disenrollment that
14 you say have nothing to with the criminal matters,
15 but it does. It affects us, child welfare, it
16 affects everything.

17 THE COURT: But right now we're dealing
18 with the chief. Why do you believe the chief -- what
19 I'm trying to ask you is if there's questions you
20 have of the chief, why are you blaming the chief for
21 something someone else did?

22 MR. PHEBUS: Who did it?

23 THE WITNESS: I'm going to explain it.

24 THE COURT: Go ahead.

25 THE WITNESS: Yes, he did get a

14

1 came about. I can explain that.

2 THE COURT: But my initial question is do
3 you have the order in your possession?

4 THE WITNESS: No.

5 THE COURT: Do you know where the order
6 is?

7 THE WITNESS: I don't.

8 THE COURT: And Mr. Colvin that we're
9 talking about, Dave Colvin, the tribal attorney, does
10 he have a set of records that are in question here?

11 THE WITNESS: Well, I believe what the
12 situation is, he is the tribal attorney, and when he
13 would not entertain any requests from me because it's
14 an enrollment issue, and supposedly Mr. Phebus has a
15 court of record attorney, and that they have to go
16 through certain protocol, I couldn't get anything
17 from him, even though I could call, he would say no.

18 BY MR. PHEBUS:

19 Q. How did it end up in my medical file to
20 send me to jail?

21 A. That's the CIB you're asking about.

22 Q. That's right. That's enrollment. You
23 shouldn't have nothing to do with it.

24 A. I can explain that.

25 Q. No, you can't because she never gave you

16

1 Certificate of Indian Blood for medical assistance.
2 Now, this was back when he was in custody a couple
3 years ago. He went to jail. Now, his mother is
4 sitting here. She did come in to see me and she
5 said, I am concerned about Chris' medical, his
6 ability to receive medical treatment.

7 And I said, well, why? Well, he
8 can't receive it there. And so I said, okay, I said,
9 if he can't get medical treatment, I'll see what I
10 can do as far as make those powers to be aware of
11 this. That's all I can do, because I don't know what
12 the procedure is myself.

13 So at that particular time when
14 she left I contacted the court and Judge Tsosi was
15 the judge that was in charge of his incarceration at
16 that time and ordered him to jail, and from that
17 point she took everything into consideration as far
18 as him being in custody, and she did know that his
19 mom had come in concerned about his medical and
20 wanted him to be able to receive medical treatment.

21 Now, when I contacted the Bureau
22 of Indian Affairs they said, well, one of two things
23 is going to happen. We need a Certificate of Indian
24 Blood to show that he is a descendent of Native
25 American. Tribal member will work. That's all.

17

1 That's all the Certificate of Indian Blood is. It
 2 has nothing to do with anything else except for
 3 medical assistance.

4 Or we're going to send him to a
 5 facility outside the BIA, which would be a county
 6 hospital or whatever. Say something happened to him
 7 and he needed medical, they would transport him over.
 8 They would not pay for it. That they would come back
 9 to him or his mother.

10 Now, that's the two choices we
 11 have, so when I contacted the Judge or I may have
 12 went through the court clerk and said, hey, this is
 13 what's happening, this is what we need. The Judge
 14 comes back, Judge Tsosi, and orders that CIB be
 15 provided for Chris Phebus because one, not that only
 16 his mother come in requesting assistance, but two, in
 17 her opinion we didn't need that because he was in our
 18 custody, he's our responsibility, and we have to
 19 provide medical treatment to him.

20 BY MR. PHEBUS:
 21 Q. Her opinion.
 22 A. That was her opinion.
 23 Q. You never gave her one. You didn't ask
 24 her -- you didn't give her -- you didn't even tell
 25 her you were going to make one.

19

1 assistance.

2 Now, how it got in his file up
 3 here at the health clinic, which he's wanting to
 4 know, there's only a couple ways that that could have
 5 happened. Either the director got a copy from our
 6 counsel, or two, the facility where he was at, it was
 7 New Mexico, wherever it might have been, I don't
 8 remember, when they treated him, even if it was on an
 9 intake for a physical to make sure he was okay, they
 10 would bill our facility, because this Tribe would be
 11 paying for whatever it is that they do for him, and
 12 they have to have that Certificate of Indian Blood at
 13 our health clinic to pay for whatever medical cost
 14 he's created for the BIA.

15 Now, that could have been how that
 16 got to your file. That's all I know.

17 THE COURT: And the rock that was brought
 18 forward, were you here when that rock was --

19 THE WITNESS: No. When it was brought
 20 into the station, sir, no.

21 MR. PHEBUS: Can I ask him something?
 22 THE COURT: Go ahead.

23 BY MR. PHEBUS:
 24 Q. Again, you didn't need permission to ask
 25 Tsosi to get that.

18

1 THE COURT: Who's she?
 2
 3 (Overlapping speakers)
 4
 5 THE WITNESS: She told us to make one.
 6 THE COURT: We'll let you testify is.
 7
 8 (Overlapping speakers)
 9
 10 BY MR. PHEBUS:
 11 Q. What did Judge Tsosi have to do with her
 12 blood quantum? You tell me that.
 13 A. Can I finish?
 14 Q. No, no, no, no.
 15 THE COURT: Go ahead, Chief.
 16
 17 (Overlapping speakers)
 18
 19 You're going to get an opportunity
 20 to ask questions. You asked question. He's answered
 21 it. Go ahead.
 22 THE WITNESS: That's how the Certificate
 23 of Indian Blood came about. And then when I received
 24 it, I provided it to the Bureau of Indian Affairs,
 25 because that's what they needed to provide medical

20

1 Can you distinguish -- I need to
 2 get this clarified. When you asked Tsosi to make
 3 that Certificate of Indian Blood for purposes of
 4 getting me in jail, it wasn't -- your paperwork don't
 5 say that. Your paperwork says this Certificate of
 6 Indian Blood --

7 A. Whatever it says, Chris, that's what she
 8 came back with, and she also said, as far as I
 9 know --

10 Q. You have a choice, this Tribe has a
 11 choice. It can either pay for me at North Las Vegas
 12 or Henderson or it can send me to BIA. You had that.
 13 You don't need a Certificate of Indian Blood to leave
 14 me in North Las Vegas. You needed one to get me to
 15 the BIA. The Tribe can pay for my stay in North Las
 16 Vegas. You can determine that.

17 A. That's not correct. I don't need one to
 18 get you to BIA. I need one or we do to get you
 19 services through medical.

20 Q. But, now, again, that Certificate of
 21 Indian Blood got into my record after you had Ramona
 22 Tsosi make it. It became -- it came from you.

23 A. She decided to do it. I just told her
 24 what the BIA requested.

25 Q. In your Tribe?

21

1 A. No, I said the Bureau of Indian Affairs.

2 What they requested to --

3 Q. What about us, not the Bureau of Indian

4 Affairs. You know what's really funny --

5 THE COURT: You have to ask questions,

6 Mr. Phebus.

7 MR. PHEBUS: Can I direct something to

8 you?

9 THE COURT: No, not at this point. Do

10 you have any other questions?

11 MR. PHEBUS: No.

12 THE COURT: Do you have any redirect?

13 MR. MURCH: No, your Honor.

14 THE COURT: Thank you. You're excused.

15

16 (Witness excused)

17

18 MR. MURCH: The Tribe calls Everson

19 Nakai.

20

21

22

23

24

25

23

1 A. Yeah.

2 Q. Just inside the front door?

3 A. Yes.

4 Q. So if you come in the front door and look

5 to the right, is that where you sit?

6 A. That's the office.

7 Q. And do you know Christopher Phebus?

8 A. Yes, I do.

9 Q. Can you identify Mr. Phebus?

10 A. He's right here, sitting right here.

11 MR. MURCH: Let the record reflect he

12 identified the defendant Mr. Phebus.

13 THE COURT: The record will so reflect.

14 BY MR. MURCH:

15 Q. Were you working on the night or the

16 afternoon of November 7, 2012.

17 A. Yes, I was.

18 Q. Do you recall an incident that happened

19 with Mr. Phebus on that day?

20 A. Yes.

21 Q. Can you describe that for me?

22 A. He came into the department holding a

23 rock, saying, tell Belcher when he comes in tomorrow

24 I got something for him.

25 Q. Then what happened after that?

22

1 EVERSON NAKAI, having been first duly

2 sworn to testify to the truth, the whole truth, and

3 nothing but the truth, testified as follows:

4

5 DIRECT EXAMINATION

6 BY MR. MURCH:

7 Q. State your name for the record, please.

8 A. Everson Nakai.

9 Q. Mr. Nakai, who's your employer?

10 A. Las Vegas Paiute Police Department.

11 Q. What is your job title?

12 A. I'm the tech radio department

13 coordinator.

14 Q. Can you explain that in layman's terms,

15 what responsibility you have?

16 A. I communicate between our police

17 department and the Department of Public Safety for

18 the State of Nevada and make sure our department is

19 in compliance with the daily policy and procedures.

20 Q. Do you also perform dispatch duties for

21 the Tribe?

22 A. Yes, I do.

23 Q. Where is your desk located?

24 A. In the front of the building.

25 Q. In this building?

24

1 A. He left.

2 MR. MURCH: I have no further questions

3 for this witness.

4 THE COURT: Cross-examination,

5 Mr. Phebus.

6

7 CROSS-EXAMINATION

8 BY MR. PHEBUS:

9 Q. Everson, have you ever felt any danger of

10 me? Have I ever made you feel in danger?

11 A. No.

12 THE COURT: At any time did you see a

13 rock?

14 THE WITNESS: Yes.

15 THE COURT: And where did you see the

16 rock?

17 THE WITNESS: In his right hand.

18 BY MR. PHEBUS:

19 Q. Did it have a paper on it?

20 A. Yes.

21 THE COURT: How big was the rock?

22 THE WITNESS: I'd say a good size. About

23 that size.

24 THE COURT: Just for the record you're

25 holding your two hands up apart --

25

1 THE WITNESS: Pretty big.

2 THE COURT: -- six to eight inches?

3 THE WITNESS: Yeah.

4 THE COURT: Go ahead.

5 BY MR. PHEBUS:

6 Q. Did you see the video?

7 A. Yes, I did.

8 Q. The first time when I came in -- nothing.

9 I have no questions.

10 THE COURT: What was your understanding

11 when he showed you the rock?

12 THE WITNESS: That he was going to throw

13 it through Chief Belcher's and basically the paper

14 was his CIB?

15 BY MR. PHEBUS:

16 Q. Were you here when the first incident

17 happened when I came in and talked to Belcher?

18 A. The first incident --

19 Q. When I came in and told Belcher what I

20 was going to do, were you here?

21 A. Yes, I was.

22 THE COURT: Any other questions?

23 MR. MURCH: No, your Honor.

24 THE COURT: You may be excused.

25 Is he free to leave?

27

1 questions to ask you. I don't know what direction

2 I'm going here really. I just --

3 THE COURT: Is your mother involved in

4 this at all?

5 MR. PHEBUS: Well, yes, because the

6 certificate.

7 THE COURT: Do you want to call her as a

8 witness?

9 MR. PHEBUS: I don't want my mom to be in

10 court because you just don't understand these civil

11 matters, you know, when you --

12 THE COURT: This isn't a civil matter.

13

14 (Overlapping speakers)

15

16 MR. PHEBUS: Mom, I'm not an attorney.

17 MS. WILSON: Listen to me. You need to

18 tell the Judge sometime that I'm sick all the time.

19 MR. PHEBUS: You're here to tell him now.

20 THE COURT: Ma'am, do you want to

21 testify?

22 MS. WILSON: All I know is --

23 THE COURT: If you do, we need to have

24 you come up and state your name.

25 MS. WILSON: My son supposedly --

26

1 MR. MURCH: He's free to leave.

2

3 (Witness excused)

4

5 That's all of my witnesses.

6 THE COURT: What about the videotape?

7 MR. MURCH: I do have a copy of the

8 videotape.

9 THE COURT: Is there any way to play it?

10 MR. MURCH: I don't have a way to play

11 it.

12 THE CLERK: In my desktop computer.

13 THE COURT: Have you seen the tape,

14 Mr. Phebus?

15 MR. PHEBUS: I don't care to. I know

16 what I did.

17 MR. MURCH: I don't know that we need the

18 videotape unless your Honor wants to see it.

19 THE COURT: He's had an opportunity to

20 see it. He's not taking exception to the statements.

21 This is your time to call

22 witnesses or you can testify.

23 MR. PHEBUS: I'll testify. Can I speak?

24 THE COURT: Yes.

25 MR. PHEBUS: I don't know. I have

28

1 THE COURT: We'll give you an oath and

2 we'll have you sit here.

3

4

5 M A R I E W I L S O N, having been first duly sworn

6 to testify to the truth, the whole truth, and nothing

7 but the truth, testified as follows:

8

9

10 THE COURT: Can you state your name for

11 the record?

12 THE WITNESS: Marie Wilson, 1308 Kent

13 Street.

14 THE COURT: Go ahead and have a seat.

15 THE WITNESS: I'm going to stand.

16 THE COURT: That's fine.

17 Chris, do you want to ask her

18 questions?

19 THE WITNESS: You really don't have to.

20 MR. PHEBUS: I can't ask her nothing

21 because everything the Court done was in her favor.

22 If you don't understand it by now, there ain't no

23 need for me to have to question my mom. The

24 Certificate of Indian Blood came from this court.

25 You want to know about it, you ask her.

29

1 If you're going put me in jail
2 under the Certificate of Indian Blood using her blood
3 quantum, you ask her about it, but don't involve her
4 in it. I don't want her here as it is, but I can't
5 explain to you why I was angry, why I came and did
6 that. It's affecting my whole family.

7

8 EXAMINATION

9 BY THE COURT:

10 Q. Were you aware that Chris had problems
11 with trying to get some kind of information
12 concerning his Certificate of Blood?

13 A. Not till after the fact. After he told
14 me way later. Other than that, I usually don't know
15 much of what he does because he doesn't want for me
16 to hear anything because I'm not in very good health.

17 MR. PHEBUS: I tell you, I ask you all
18 the time, what do you and Gloria do, you guys get
19 stressed, and you leave. I tell you all the time.

20 THE WITNESS: I know. It's very
21 stressful in here.

22 MR. PHEBUS: Don't argue. Tell him.

23 BY THE COURT:

24 Q. Do you have any recollection of Chris
25 taking a rock and --

30

1 A. No. I didn't even know he did that.
2 Usually, when my sister comes and I'm at the house --

3 MR. PHEBUS: It's not about my mom and
4 what she knows. It's about the legal part. You're
5 trying to blame me and the rock, but you got to go
6 back. Why I'm doing this. I'm trying to set a point
7 with you.

8 THE COURT: You're going to either have
9 to ask questions or you can make your statement, if
10 you don't want to ask any questions.

11

12 (Overlapping speakers)

13

14 The reason I wanted to ask her
15 some questions, I was curious as to what she knew
16 about your activities, because I don't have any
17 objection to trying to get legal material, but I'm
18 just concerned that you're repeatedly in here with
19 threats and violence for intimidating people, and I'm
20 just trying to find out. I don't want to cause any
21 stress for your mother either, but I don't believe
22 that I'm the one causing the stress.

23 MR. PHEBUS: I feel a victim by you.
24 She's a victim by you.

25 THE WITNESS: Well, here, I think we've

31

1 all been victimized by the Tribal Council. As long
2 as they're getting the money, they're happy.

3 BY THE COURT:

4 Q. Do you understand that the charges that
5 are against him at this point, they're not dealing
6 with the Council, they're dealing with his
7 activities?

8 A. I understand that.

9 Q. Is there anything else you'd like to tell
10 me?

11 A. Well, I don't want my son going to jail
12 because, you know, I do need my son. He helps me an
13 awful lot at the house because there's stuff that I'm
14 just not able to do anymore. I'm 70 years old. I'm
15 not a kid anymore.

16 THE COURT: Thank you.

17

18 (Witness excused)

19

20 All right. Chris, this is your
21 opportunity. You can take the stand, if you wish,
22 testify, or you can question yourself, make a
23 presentation or statement to the Court.

24 And, likewise, if you don't want
25 to make a statement, the burden is upon the Tribe to

32

1 prove their case. It's up to you the way you want to
2 handle it.

3 MR. PHEBUS: I would like to say
4 something, yes. I have questions to ask.

5 THE COURT: All right. We'll put you
6 under oath.

7

8

9 CHRISTOPHER PHEBUS, having been first
10 duly sworn to testify to the truth, the whole truth,
11 and nothing but the truth, testified as follows:

12

13

14 THE COURT: Go ahead. State your name
15 for the record.

16 MR. PHEBUS: Chris Phebus, P-h-e-b-u-s.

17 You know, I'm so confused. It's
18 like when I come to this court it's, you know, my --
19 I just got to tell you, don't feel sympathy for me,
20 just understand I'm really angry here.

21 Last week my first cousin on Moapa
22 Reservation has issues, and the issues were between
23 law enforcement, which he did not like dealing with,
24 but yet I come and try to be reasonable.

25 Well, he got killed by police

33

1 because he had a gun. Well, I don't carry no gun. I
 2 come over here and I try to be reasonable. This
 3 young man tried to go to the Council and present
 4 himself. He could not speak. He wasn't intimidated
 5 by anything. He walked up to that Council and tried
 6 to talk. They wouldn't let him.

7 I am intimidated by law
 8 enforcement where I can't go to the Council. I can't
 9 because of you, because you've ordered it for me,
 10 trespassed me before. You won't explain to me what
 11 Las Vegas Paiute is, and I'm sitting in here fighting
 12 for it.

13 Now, no, no, no. What does that
 14 have to do with this case? That's why I went to
 15 Equity Health to get that Certificate of Indian
 16 Blood, because after two years I can't file a
 17 complaint and make it legal because all this time
 18 you've been allowing the Tribe to prosecute me, an
 19 Indian.

20 My two years for filing a
 21 complaint against what they're doing has passed. I
 22 don't know what to say. All I can say is that I did
 23 it out of anger, and if you was going to arrest me
 24 for something, why did it have to seem like it was
 25 going to happen after I went and started doing my

34

1 incident report for my complaint, then I get a
 2 notice --

3 THE COURT: What incident report are you
 4 referring to?

5 MR. PHEBUS: I have Officer Dawkins go up
 6 before and make an incident report at Equity Health
 7 because of that Certificate of Indian Blood that she
 8 requested be made.

9 THE COURT: Do you mean Jay Alter?

10 MR. PHEBUS: Yes. That ended up in my
 11 file. So when I found it in my files, why I came
 12 down to get Dawkins is because all the other
 13 information that was -- all my other Indian papers
 14 that identified me was gone. They don't know where
 15 it's at. They don't know who it was given to. So I
 16 cannot get it.

17 I'm angry about it, so I come to
 18 have Officer Dawkins make an incident report. Next
 19 thing I know days later Belcher is filing complaint
 20 against me because of my incident over here with the
 21 rock. I still can't get any cooperation to complete
 22 that incident report, so I can't even make the damn
 23 complaint because I ain't got nothing to back it up
 24 because you already allowed it.

25 If you were to allow people to use

35

1 that Bruce test equally around here, you would not
 2 have a Tribe, but you're not there.

3 THE COURT: Do you have questions of
 4 Mr. Phebus, counsel?

5 MR. PHEBUS: No, no, no, Mr. Murch, just
 6 because -- can I say one more thing, Officer?

7 THE COURT: Go ahead.

8 MR. PHEBUS: You believe because Dave
 9 Colvin went to Federal Court and Mr. Stuff for habeas
 10 corpus, that that Federal Judge ruled in the Tribe's
 11 favor that according to the constitution and bylaws
 12 they have the right to review their own court orders.

13 You believe that that's what Tribe
 14 is, correct, because I have asked you, what is Tribe,
 15 and you said Tribal Council. Well, individually,
 16 Tribal Council is individual members. In order to be
 17 a Council member you must be a tribal member. In
 18 order to be a tribal member, you must have blood
 19 quantum and history.

20 Well, then people don't have it,
 21 and when you decide Bruce to put me in jail all the
 22 time with that Certificate of Indian Blood, they get
 23 away with child welfare cases and everything. What
 24 do we get? Nothing. Nothing from you. You don't do
 25 nothing.

36

1 You tell me you can't initiate
 2 when you allowed him to make in his court paperwork
 3 what that Certificate of Indian Blood is. My grandma
 4 has a blood quantum right along with my grandpa's.
 5 If she did not have that blood quantum, they would
 6 not have put it on there.

7 Just because the Tribe don't want
 8 to recognize her for not being federally recognized
 9 from a reservation does not mean she's Indian.
 10 Indians don't come from a reservation. They were put
 11 on it. I have a different blood quantum. What do
 12 you got?

13 THE COURT: That's not the issue.

14 MR. PHEBUS: Yes, that's right. All
 15 in-house, whenever something happens to me here with
 16 something on this Tribe that is an employee here, I
 17 got to go to court for it. Mr. Belcher knows --

18 THE COURT: No, you don't have to go to
 19 court on it. What happened here is you threatened
 20 someone with a rock.

21 MR. PHEBUS: Why didn't I go to jail when
 22 it happened?

23 THE COURT: Because they were trying to
 24 summons you in here to deal with you in a fashion
 25 that didn't put you in jail, okay?

37

Do you have anything else to say
or questions?

MR. PHEBUS: I don't have nothing to say.
I'm just lost.

THE COURT: Any other evidence you want
to present?

MR. PHEBUS: No.

THE COURT: Are you resting your case at
this point?

MR. PHEBUS: I'm sorry I did what I did
and came in here with that rock like that.

THE COURT: Do you have an argument to
make at this point?

MR. MURCH: I could argue or ask him a
couple questions.

THE COURT: Go ahead and ask.

CROSS-EXAMINATION

BY MR. MURCH:

Q. You admit that you spoke with Chief
Belcher on November 6, 2012?

A. Mm-hmm.

Q. You admit that you stated to him that if
your Certificate of Blood was at the health clinic,
you would get it and throw it through his window with

39

MR. MURCH: I don't have any more
questions.

(Witness excused)

THE COURT: Argument.

MR. MURCH: That's it, your Honor.

Looking at Tribal Code Section

5-60-020 --

MR. PHEBUS: Is argument from him or is
it my turn?

THE COURT: He gets to go first because
he has the burden, then you get to go second and then
he gets to rebut.

MR. MURCH: A person is guilty of
improper influence on official matters if, among
other things, he threatens harm to a public servant.
That doesn't say to a public servant directly. It
can be threatening harm as when someone threatens
harm to the President, doesn't have to be to the
President directly. I read the statute to mean the
same thing here.

THE COURT: What's his decision that's
being influenced?

MR. MURCH: I believe the testimony was

38

the rock, words to that effect?

A. To that effect.

Q. Then you came back to the police station
on November 7, 2012, correct?

A. Mm-hmm.

Q. And you had a rock in your hand?

A. Mm-hmm.

Q. And you heard Mr. Nakai describe the size
of the rock?

A. And even got it on video.

Q. Would you agree that that statement is
accurate, that the size of the rock was as he
described?

A. Just like that.

Q. Was wrapped in a piece of paper?

A. Yeah, and the paper was Certificate of
Indian Blood.

Q. You made a statement to the effect to
tell Belcher when he comes in tomorrow I have
something for him?

A. Mm-hmm.

Q. You admit that?

A. But --

Q. You admit that?

A. Mm-hmm.

40

that Mr. Phebus believes that Mr. Belcher, Chief
Belcher, had something to do or has the ability to do
something about this Certificate of Indian Blood.

And we keep coming back here with
Mr. Phebus on the same types, seems to be an
escalation, but the same types of behavior where
Mr. Phebus is expecting Chief Belcher can do
something for him or will do something for him and
comes in and behaves in a way that is detrimental to
the police station and to the Tribe and to the
welfare of the people in this building and the
threats have seemed to escalate. There we are.

THE COURT: Mr. Phebus, you have an
opportunity to address the Court as to the case.

MR. PHEBUS: I just can't understand. I
don't know what to say because you just --

THE COURT: All right. Do you have
anything else you want to bring before the Court?
This is your opportunity now.

If not, there's no need to rebut
since he's waiving his closing, I guess.

Do you have anything else you want
to bring before the Court as to whether you were
involved in threatening Chief Belcher with the rock?

I'm going to find you guilty as

41

1 charged in the Criminal Complaint.

2 What's the Tribe's pleasure on the

3 case?

4 MR. MURCH: Your Honor, I'm going to ask

5 for the full sentence at least in terms of

6 imprisonment, six months. The fine I don't think is

7 going to make a difference, so that's why I'm asking

8 for the full sentence in terms of time, because he's

9 not going to pay the fine. He's not going to do the

10 community service is my understanding, based on his

11 past conduct.

12 So I would ask the Court to take

13 Mr. Phebus' history into account and impose the full

14 six month sentence.

15 THE COURT: Can you speak as to your

16 sentence?

17 MR. PHEBUS: He offered me 10 days if I

18 would have accepted his deal. Now that he don't and

19 now it's six months.

20 THE COURT: It's a Class B offense.

21 MR. PHEBUS: Is A like the worst or is D

22 the worst?

23 THE COURT: A is the worst. That's why

24 you're receiving a Class B offense.

25 MR. PHEBUS: My record's escalating, but

42

1 do you ever recognize the pattern of a Tribe? Here's

2 the court case where, please let me explain this.

3 Here's a court case where a Tribal Council, a tribal

4 member, as well as a Tribal Council member, as well

5 as Chief of Police had a court case where a tribal

6 member was suing her for a hundred thousand dollars

7 for kicking in her house.

8 Well, the prosecuting attorney at

9 that time was allowed by Tribe to defend the police

10 chief, okay, but yet when he's sitting up here

11 defending off of his own record why he was allowed to

12 make this Certificate of Indian Blood, why he was

13 allowed to defend it, what is it doing for my mom who

14 was a tribal member.

15 THE COURT: Your mother's not in here

16 today, you are. The Court case isn't relevant to the

17 criminal proceeding here. What we're talking about

18 here is -- what you need to be listening to is you

19 need to present to me why six months is not

20 appropriate for you to spend in jail, okay?

21 I found you guilty of these

22 charges. I would note that you were just given an

23 opportunity for credit for time served, which was a

24 couple of days just before this, and your response

25 was then to go in, and I've said this before, I

43

1 believe you're a terrorist. I believe you try and

2 instill fear in these people.

3 So unless you can convince me

4 something differently, this Tribe has requested,

5 because on the scale of what I have seen in this

6 court, is that you're here to cause problems for the

7 Tribe, and you don't have any remorse. You feel

8 you're the victim in all of these cases, and you

9 continue to terrorize people.

10 You were given an opportunity to

11 previously --

12 MR. PHEBUS: Who am I terrorizing?

13 THE COURT: You're terrorizing the

14 employees.

15 MR. PHEBUS: Whose Tribe? Whose Tribe?

16 Who, you?

17 THE COURT: The Tribe is the Palute

18 Tribe.

19 MR. PHEBUS: You said Tribal Council.

20 THE COURT: And you're here to try and

21 intimidate the people. You're missing the issue.

22 MR. PHEBUS: No, no, no. What people?

23 THE COURT: You're missing the issue.

24

25 (Overlapping speakers)

44

1 You're a member of the Tribe.

2 MR. PHEBUS: I'm coming over here trying

3 to help myself. You're turning it against me.

4 THE COURT: You're turning it against

5 yourself. I gave you the benefit the last time you

6 were in here to act like a mature adult.

7 MR. PHEBUS: I'm not a lawyer. What do

8 you want me to act like. If I had a vocabulary like

9 you, maybe you would think different, but you're

10 looking down on me.

11 THE COURT: I'm looking at you because

12 you don't act normally. I'm trying to give you

13 counseling. I've tried to give you an opportunity to

14 act like a rational person. You've thrown fits in

15 here. You've been taken out of custody. You've

16 refused to go to get counseling. You're bringing

17 your mother in here, and now all you're doing is

18 arguing again.

19 I let you out on a credit for time

20 served and your response was to come over just a few

21 days later and threaten Chief Belcher with a rock,

22 which you admitted to.

23 MR. PHEBUS: Because of what the

24 Certificate of Indian Blood --

25 THE COURT: If you believe that you have

45

1 been treated unfairly, explain to me why I shouldn't
2 put you --

3 MR. PHEBUS: I can't do it. It's too
4 much. Don't you understand that? I have to account
5 for everything I've done here. I have to account for
6 the disenrollments. How can I do that. I can't
7 write it. I'm trying. I can't do it for you.

8 THE COURT: Tell me why I shouldn't put
9 you in jail for six months. That's the issue right
10 now. You're going to jail for six months unless you
11 can tell me one reason why I shouldn't do it.

12 MR. PHEBUS: Because I'm not -- I
13 don't -- I'm not against this Tribe. I want to work
14 with everybody, but I can't because you don't -- you
15 intimidate me. You don't help me. You don't try
16 to -- you say you do by sending me to all of this.
17 What about my legal issues here.

18 THE COURT: What about the Tribe? What
19 about the people that work here that are afraid of
20 you that come to work every day worried about Chris
21 Phebus flipping out and causing some type of problem.
22 What about your family. What about your family, what
23 you're putting them through.

24 MR. PHEBUS: Right now Belcher has an
25 incident up the street where --

46

1 THE COURT: You're not telling me
2 anything other than you're giving me excuses and
3 blaming everyone.

4 MR. PHEBUS: You're not letting me
5 explain something. I'm not blaming nobody because
6 you never let me say it yet. Please, may I speak?

7 THE COURT: Go ahead.

8 MR. PHEBUS: There was an incident up the
9 street between a tribal member and a nonmember and a
10 property dispute. Instead of going to tribal court,
11 because the incident led to a police having to go up
12 to the house on an incident because they were called.

13 Well, instead of that incident
14 being held in the court, okay, between a nonmember
15 and a tribal member, it was allowed to be taken
16 across the street simply because the family and
17 handled in the Council room.

18 I don't get that option. You're
19 forcing me to have to go to court, to have to write
20 all this down. I wouldn't act this way, but you do
21 not look at what you have --

22 THE COURT: You're not convincing me by
23 blaming. You won't take responsibility for anything
24 you've ever done. You haven't taken responsibility
25 for anything you've done. Unless you can tell me

47

1 something --

2

3 (Overlapping speakers)

4

5 Unless you can tell me something
6 here, you're going away for six months.

7 MR. PHEBUS: I'm sorry for what I did in
8 the manner that I did it. I don't deserve six
9 months. I don't deserve a day. I need help. I need
10 you to tell me why are they doing this.

11 THE COURT: Because they made a
12 determination that you're not of the quantum
13 necessary. You know that. We've gone through this
14 several times. You came in here and made those
15 determinations. I let you draw your pictures. You
16 explained it all to me. I've read your entire file.

17 I know everything about your case,
18 okay, but all you want to do is cause more problems
19 and you won't do anything constructive, okay? You
20 have your mother here now, and I'm trying to find out
21 from your family why you believe you have the right
22 to terrorize people.

23 MS. WILSON: I don't know that he
24 terrorizes people. He grew up here. You talk to the
25 old people like me, they'll tell you where to get off

48

1 and how to get on that cart and go. That's just the
2 way --

3 THE COURT: The problem is --

4

5 (Overlapping speakers)

6

7 MR. PHEBUS: You don't give me --

8 THE COURT: I'm talking to your mother.

9 The problem is he comes over with
10 a rock --

11 MS. WILSON: I understand that.

12 THE COURT: -- and threatens to throw the
13 rock through the window. If this was the first time
14 that this had happened, I might be sympathetic to
15 what his plight is, okay, but he is in here
16 repeatedly. They tried to bar him from the
17 reservation here, and we didn't do that because I
18 believed that he had already been convicted.

19 Then he came in here on another
20 charge and drew the pictures for me and explained it
21 to me, what I already knew, but he felt justified in
22 it and said he had a right to use the language that
23 he thought was appropriate if he thought he was
24 victimized because as mature adults we talk to one
25 another and express.

49

1 I've let you get away and express
2 yourself here in the court, but your response then
3 was to bring a rock here and threaten the chief, and
4 you haven't denied that. In fact, you felt that you
5 were responsible for it. So my concern is protecting
6 the other people here.

7 The Tribe has brought forward
8 these charges against you. You haven't denied them,
9 but you're trying to then make some type of response.
10 So I'm going to follow the recommendation of the
11 Tribe. You're going to be sentenced to six months.

12 MS. WILSON: Where are you going to send
13 him to?

14 MR. PHEBUS: What did I do so bad?

15 THE COURT: You threatened the Chief of
16 Police here. You have contempt for authority here on
17 the Tribe. Your choice would be to go and live
18 somewhere else. What I'm going to do here, unless
19 you and your mother can convince me that you would
20 try and do something, but all you want to do is make
21 further accusations, and you'll be away for six
22 months, and that way the Tribe won't have to worry
23 about you threatening anyone else or causing other
24 problems.

25 MR. PHEBUS: What about my future here.

51

1 Ma'am, it's not up to you.

2 MS. WILSON: It is going to be up to me.

3 THE COURT: Officer, can you remove him.

4 MR. PHEBUS: Why did you make me leave in
5 front of all these people so you could hide me.

6 THE COURT: I told you before we were
7 taking the cases. This is the longest case. The
8 other people don't want to be here. They're afraid
9 of you.

10 MR. PHEBUS: Who?

11 THE COURT: Everybody that deals with you
12 is afraid of you.

13 MR. PHEBUS: I live here. Do you have
14 everybody's complaint against me? Who?

15 THE COURT: The Chief for one was here as
16 a complaining witness.

17 MR. PHEBUS: Why do you have to put me in
18 jail for six months?

19 THE COURT: Because you haven't learned,
20 okay? I've given you every break I can, and all you
21 want to do is blame other people. So I'm giving you
22 an opportunity to isolate you from the rest of the
23 Tribe here, okay?

24 MR. PHEBUS: What happens after the six
25 months?

50

1 If we can get kicked out like this, what's going to
2 happen to my family when she goes. What are you
3 going to do then. You going to still be a judge
4 here? No, because at any time you can be kicked out
5 of here. So can I. I'm trying to fight for that.

6 THE COURT: They were trying to remove
7 you before from here. You were going to be
8 trespassed.

9 MR. PHEBUS: After my disenrollment.

10 THE COURT: This was after your
11 disenrollment, but you still haven't told me
12 anything --

13 MR. PHEBUS: Give me some advice.

14 THE COURT: I already gave you advice. I
15 gave you numerous advice.

16 MR. PHEBUS: Why?

17 THE COURT: You're placed in the custody
18 of the Chief. He's to make arrangements and advise
19 you.

20 MS. WILSON: Where are they going to
21 place him?

22 THE COURT: He'll probably go to Peach
23 Springs.

24
25 (Overlapping speakers)

52

1 THE COURT: I don't know. It's up to the
2 Tribe.

3 MS. WILSON: You'll get to come back.

4 MR. PHEBUS: Wait, mom, wait.

5 What do you mean it's up to the
6 Tribe? And then they can bring it in front of you
7 and you can order to trespass me again? He tried
8 that last month, and then you wouldn't even write
9 down an explanation that I asked for it.

10 THE COURT: You've been sentenced to six
11 months, okay.

12 MR. PHEBUS: You're a fucking asshole.

13 THE COURT: That motion's denied too.

14 ---o0o---

15 ATTEST: Full, true and accurate transcript of
16 proceedings.

17 GERRI DE LUCCA, C.C.R. NO. 82
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EXHIBIT 6

EXHIBIT 6

**LAS VEGAS PAIUTE TRIBAL COURT
LAS VEGAS, NEVADA**

ENTERED

JAN 04 2013

LAS VEGAS PAIUTE
TRIBAL COURT

THE LAS VEGAS PAIUTE TRIBE)
)
) Plaintiff)
Vs.)
)
CHRISTOPHER PHEBUS)
)
) Defendant)

Case No. CR12-008


**ORDER AND JUDGMENT
OF CONVICTION**

The above-captioned matter came before this Court for a bench trial on Wednesday, December 27, 2012. Tribal prosecutor Patrick J. Murch, Esq. appeared on behalf of the Las Vegas Paiute Tribe, and defendant Christopher Phebus appeared *pro se*.

The Court having reviewed the oral and documentary evidence and the arguments of both parties, and good cause appearing, IT IS HEREBY ORDERED as follows:

1. Pursuant to Las Vegas Paiute Tribal Code 1-30-010, Christopher Phebus, DOB: 07/31/69 and SSN#: xxx-xx-5723 is found GUILTY of: IMPROPER INFLUENCE IN OFFICIAL MATTERS, Tribal Code 5-60-020, a class B offense and is adjudge convicted of the said offence.
2. Mr. Phebus shall be incarcerated for a period of Six (6) Months at a Bureau of Indian Affairs detention facility.
3. Mr. Phebus shall be remanded into immediate custody with Chief Belcher of the Las Vegas Paiute Tribal Police to begin serving his sentence.
4. Mr. Phebus' release date shall be Friday, June 28, 2013.

SO ORDERED THIS 4th DAY OF JANUARY, 2012.



Judge Cal J. Potter, III
Las Vegas Paiute Tribal Court Judge

CC:

Patrick J. Murch, Prosecutor, Las Vegas Tribe
Christopher Phebus, Defendant
Chief Don Belcher, Police Department

EXHIBIT 7

EXHIBIT 7

01/10/13

W Paiute Tribal Court

Filed in L.V. Paiute Court

Date: 1/10/13 Time: 1:30pm

Chris Phebus

Court Clerk: ~~JP~~ CR12-008

VS

Motion

LV Paiute Tribe

Requests that local LV Att.
Col Potter be removed from all
future court cases regarding your defendant
Chris Phebus. That Col Potters decision
for such a severe incarceration period was
biased, made. Can be proven by federal
controlling Bruce and the procedure
used to implement this law. Your affiant
believes Col Potters decision to be judge
was for his own personal benefit and con-
venience despite the name LV Paiute.
Can be proven by the best judge local LV
Att. Gregg Kopp's letter titled Intimidation
within Court Procedure.

Sincerely,

Christopher Phebus

EXHIBIT 8

EXHIBIT 8

LAS VEGAS PAIUTE TRIBAL COURT
CLARK COUNTY, NEVADA

ENTERED

JAN 16 2013

LAS VEGAS PAIUTE
TRIBAL COURT

Las Vegas Paiute Tribe,)
) CR12-008
Plaintiff,)
)
vs.)
)
Christopher Phebus,)
)
Defendant)

ORDER

The Defendant, Christopher Phebus, having been convicted of Las Vegas Paiute Tribal Law & Code 5-60-020 Improper Influence on Official Matters, on or about December 27, 2012. Mr. Phebus is in proper person and in the custody of the Las Vegas Paiute Chief of Police and having been transferred to the Owyhee Detention Facility.

The Court hereby orders that Mr. Phebus' letter, entitled "Motion", will be treated as a Notice of Appeal and the remaining matters concerning future charges against Mr. Phebus are denied as being premature.

The Clerk is directed to convene an appellate tribunal.

Dated this 16th day of January 2013,

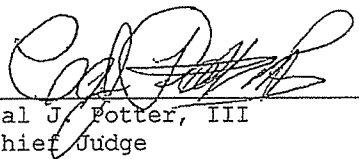

Cal J. Potter, III
Chief Judge

EXHIBIT 9

EXHIBIT 9

05/07/2013 TUE 17:23 FAX 801 238 7981 UT Court Appeals

001/001



LAS VEGAS PAIUTE TRIBAL COURT
Number One Paiute Drive
Las Vegas, NV 89146

Christopher Phebus
SS#: xxx-xx-5723
DOB: 07-31-69

**Order of Stay on Appeal, Temporary
Release and Restraining Order**

CASE NO. CR13-001

Las Vegas Paiute Tribal Court
Defendant

To the Keeper of the Owyhee Detention Facility, Bureau of Indian Affairs/ Office of Justice Services; Hwy 225, Bldg 305; PO Box 99; Owyhee, NV 89832.

Upon review of the case file, transcript and pleadings on record, the appeals court panel assigned to above matter hereby orders:

1. A stay order is issued in the matter pending a hearing on the appeal filed. Mr. Phebus is hereby ordered released forthwith and ordered to appear at the hearing scheduled below. Failure to appear may be punished by contempt of court and/or imposition of the remainder of the jail term previously by the trial court.
2. The appeal on this matter is set for hearing in the Paiute Tribal Court courtroom on May 17, 2013 at 2:00 pm.
3. The panel of judges assigned to this matter hereby direct that the prosecutor file, at least 48 hours prior to the hearing, a brief not to exceed 25 pages, addressing two points. First, the sufficiency of evidence to prove beyond a reasonable doubt the elements of the charge for which Mr. Phebus was convicted. Second, whether the sentence imposed constitutes an abuse of discretion, i.e. whether the sentence imposed is unreasonable (or cruel and unusual) in light of all the circumstances relevant to this matter.
4. Argument on this matter will focus on the two issues listed immediately above.
5. This order shall constitute a restraining order and does hereby bar Mr. Phebus from presence within 100 feet of the Tribal Police Building and offices.
6. A copy of this order shall be delivered to Mr. Phebus upon release.

You are hereby directed to release him forthwith from custody.

Entered this 6th day May 2013

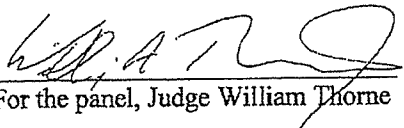

For the panel, Judge William Thorne

EXHIBIT 10

EXHIBIT 10

01/30/13

Pg. 10

ORIGINAL

INTRODUCTION

Your affiant does believe it would be unfair to judge the worth of this Affidavit without considering a combination of events surrounding these civil matters known as the Las Vegas Paiute Tribe Disenrollments of 1999. It is because of these matters that have influenced and persuaded your affiant's action resulting in the LV Paiute Tribes criminal prosecution and incarceration for the charge Improper Influence in Official matters, 5-60-020.

ARGUMENT

DISENROLLMENTS of 1999 did introduce resolutions that would have changed the definition of what a Las Vegas Paiute is. Tribes own court system ruled these resolutions were illegal, unenforceable and unconstitutional. Therefore the definition of tribe remains the same. That definition is and always has been the tribes independent record of history known as the LV Indian Colony census roll dated January 1, 1940 or better known as the 1940 census roll.

Las Vegas Paiute Tribe enacted these disenrollments concerning two individual families (Frye Petitioners known as the Sackbitts and those Carpenter Pet. your affiant).

Tribal Council along with it's enrollment committee formed of tribal members determined that their was mathematical ERRORS on the face of the tribes 1940 census roll exclusively used for enrollment/disenrollment purposes. Those ERRORS will now constitute for the

Filed in L.V. Paiute Court
Date: 2/10/13 Time: 2:00 PM

Court Clerk: [Signature]

B3-10

blood qtm's of 6 of the 7 tribal council members including Chair and Vice Chair (Benney Tso, Darren Tackett Lucille Campo, Chris Spotted Eagle, Robert Segmiller, Curtis Anderson). The breakdown of these individuals family histories would be self-explanatory.

LVP Tribal Court judge Cal Potter does not question whether current tribal council are in violation of their own constitution. LVP State Court of Appeals for those disenrolled (case #) and its Facts and Conclusions of Law will verify that they are.

BRUCE VS UNITED STATES used by LVP Law Enf. and Tribal Court will contradict itself if allowed to compare both your affiant and other descendants of enrolled tribal members according to the procedure used to establish a bld. qtm.

Other known descendants (Examples, Drew Carter Carlos Salazar Jr.) of tribal members prosecuted and convicted by tribal court may possess a Paiute/Indian bld-qtm sufficient to meet Bruce, but does not meet Las Vegas Paiute as a standard.

The name Las Vegas Paiute is now being used by Law Enf. and tribal court in vain, convenience and as a double standard when your affiant meets Bruce as a descendant of an enrolled tribal member as well as a potential tribal member with a court order for reinstatement (Case #).

Today's present prosecuting attorney (local LV

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Att Patrick J. Murch) and tribal judge (local LV
Att Cal Potter) as well as tribes own in-house
legal counsel (local LV Att. David Cullin) have rep-
resented and confirmed that those Disenrollments of
1999 as a court case still remains open. If this is
so, why does the current tribal judge Cal Potter
allow prosecution and incarceration for your affiant
under a federal law such as Bruce that requires
a bld. qtn. to fulfill its purpose? This can be

answered by convenience and does own persons
agenda (will explain momentarily).

Bruce if used fairly by tribal court would
oppose current tribal members as council members
and their bld. qtns. by comparison if broke
down by family 2000-2009 as was done for your
affiant to fulfill those Disenrollment and future
enrollments (Cockett Family Ancestry Pos. 1 of 6).

WHAT IS LAS VEGAS PAIUTE TRIBE?

According to tribal judge Cal Potter, tribal
council is supreme court. This means so to protect
his own reputation and those council members and
their own history and bld. qtns. under the federal
law Martinez vs Santa Clara Pueblo. As used pre-
viously by tribes and its legal counsel.

The fact that your affiant WPaiute history and
bld. qtn. is derived from the 1940 census roll protects
Martinez vs Santa Clara Pueblo and therefore
does not apply here.

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In order to be a tribal council member you must first be a tribal member. In order to be a tribal member you must first meet criteria such as a LV Biute history and bld. qtm.

These Disenrollments now challenge current tribal council members own individual histories and bld. qtm's.

Current judge Cal Potter has never considered his own opinion of tribe as a question to be asked of current tribal council. If he did the answer he would receive would conflict council member Debra Faria as a previous Disenrolled.

Not to mention Debra Faria was arrested by tribes Law Enf. (Provided) as a Disenrolled, labeled as a white person. Taken to county jail not recognized under tribes contract or LVSE grant. This was done while Debra Faria was attempting to visit tribes medical facilities designated for Indians with relative status. An obvious contradiction to your affiants present situation.

Your affiant believes judge Cal Potter for convenience and personal gain (tribal/federal experience for future reference) relies independently on tribal council as definition for tribe. What happened to the LV Biute (1940 census roll)?

Tribal Council at the time of Debra Faria's and Frys Petitioners reinstatement as tribal members were being threatened by Faria for claiming her family's ancestry. Can be proven by video given to judge Potter previously.

Pg. E F 10

LVPT LEGAL COUNSEL n PROS. ATT.

David Cullin has represented by previous discussion that prior his employment of 1972 as tribes legal counsel. Any documentation giving definition to tribes Const. n Bylaw (Est. in 1922) in the form of tribal minutes that are tribes records. Counsel is unaware of, can not refer to, not in possession of.

One of those definitions to tribes Const. n Bylaws concerns the provision Art. 7, Sec. 1 (h). This ordinance allows tribal council to review, overlook or ignore it's own courts orders. Or so believed by tribal council and it's attorney.

David Cullin's definition of tribes Const. n Bylaw Art 7, Sec. 1 (h) is a misrepresentation by false value. Conflicting tribes original local W. Attorney's presentation of this ordinance.

Your affiant believes tribes records have been removed and destroyed by previous tribal members as council members to conceal and secure their own unconstitutional tribal memberships (Sackett Family Errors).

Documentation can be supplied to prove the above accusations, points. Because of current tribal courts conduct your affiant does not want to implicate those other LV Attorneys at this time. Tribes counsel, Pros-Atty. and current tribal judge are stepping on fellow colleagues toes here in Las Vegas.

Prior to councilwoman Debra Farris and those Frye Pet. reinstatement as tribal members. Tribes counsel and his law firm filed suit against Debra

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Faria for posting their law firms logo on her website (<http://www.paiuteccorruption.com/>) for those disenrolled. Faria made a deal with tribes counsel and his firm to remove her website for her reinstatement as a tribal member. Your affiant believes this scenario shows misconduct and impropriety on behalf of tribes legal representative.

David Cullin as tribes attorney is only allowed to represent decisions of the tribal council. He can not speak on behalf of individual council members histories and bld. relations. Cullin will now contradict these decisions (DISENROLLMENTS / ERRORS) now that Deborah Faria is a current tribal council member.

Questions to consider. If tribes in-house attorney can not represent individual members history, bld. qtm's. How can tribes Pros. Atty. when civil issues such as enrollment/disenrollment are not criminal matters within his department? How can tribes Pros. Atty. disobey its own judicial systems orders reinstating your affiant as a tribal member with a valid explanation defined by its Facts n Concl. of Law?

Tribes Pros. Atty may carry the title of Las Vegas Paiute Tribe as an employee. This does not mean in a physical sense as a person, history of bld. qtm.

CERTIFICATE of INDIAN BLOOD is a privilege granted to individuals recognized with that specific tribe as tribal members.

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The CIB when used by tribes Law Enf. is used for incarceration purpose of another. Not intended for that person as a tribal member it was made for.

The CIB will explain that the information on itself is according to tribes enrollment/census (1940) records. This CIB will contradict tribes 1940 census roll. The 1940 census roll itself will reflect on behalf of your affiant's mother (Marie Wilson) bld. qtn. as 5/8 derived from two parents on the 1940 roll instead of 3/8 according to the CIB. Both your affiant and his mother can prove the information the CIB provides is false and violates both parties civil rights.

Shortly after these Disenrollments of 1999, Navajo tribal judge and local LV Atty. Gregory Koppe stated with written notice titled as "Interference with Court Procedure" explains during his term as tribal judge that court records as well as enrollment files have been removed and tampered with. All to the demise of those disenrolled (your affiant).

Gregg Koppe addressed more than missing files and records. He also brought up the subject of impropriety and misconduct between the tribes legal counsel David Cullwin and the tribes previous judge Terry Coffing who Gregg Koppe replaced. Cullwin and Coffing as coworkers with the same law firm.

This CIB and the permanent record it is being allowed to make is the subject of why your affiant received this charge of Improper Influence in Official Matters. Will reflect immorality.

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LEGAL REPRESENTATION as a disenrolled alone has been trouble trying to find an attorney locally in Vegas. Whenever your affiant or his family members interview a potential candidate. When given paperwork and an explanation of the last thirteen years. All those local attorneys who have represented tribe one way or the other has been an automatic defunct.

The cost alone to start a case has been a problem financially as well.

Your affiant believes tribes current judge and Pros. All take full advantage of the fact that your defendant can not represent himself on a level such as themselves.

CURRENT TRIBAL COURT without considering those disenrollments as a whole and what it has represented has allowed tribal judges through the years to preside over criminal cases as well as civil cases as important as child welfare where the name W/Prute is being used in vain and once again for convenience.

Those Disenrollment cases and those Facts n Cond. of law state that tribes body of government, Tribal Council is unconstitutional. What then is tribes judicial system? Who are allowed to use the name W/Prute when those remaining disenrolled can not.

Current tribal court is believed to intentionally ignore those remaining disenrolled (your affiant) as an

Pg. 5 of 10

issue where the importance as a case has the potential of changing Indian law across the country. Reversing federal law such as *Martinez vs Santa Clara Pueblo*.

There is no other tribe where tribes own judicial system ruled against itself (Tribe) for issues regarding enrollment/disenrollment.

INTERFERENCE with OFFICIAL MATTERS

Your affiant believes that his current conviction on behalf of tribes police chief (Belchor) was brought on in part by the fact that your affiant was in the process of organizing documentation to file charges with tribes police dept. against Police Chief Belchor for the violation of H.I.P.P.A. which resulted in the removal of personal documents from your affiant's medical files.

Your affiant did threaten Belchor with the document CIB tied to a rock to be thrown thru no particular window. After your affiant became suspicious of his medical files being tampered with.

It was because of Police Chief Belchor who acquired the document CIB for prosecution and incarceration purpose. Your affiant can prove that Chief Belchor is responsible for the insert of the CIB into his medical files which led to the removal of previous files. This can be proven with documentation written by Belchor himself to the Bureau of Ind. Aff. for your affiant's incarceration needs.

It wasn't till after your affiant insisted that

Pg. 1 of 10

an incident report (cassett) be made regarding his medical files that police Chief Belchor decided to file charges for the threat.

Your affiant is unable to provide proof for cassett because of his present incarceration and where he is located.

Would like to request oral presentation to clarify any issues you may question regarding your affiants appeal in person.

CONCLUSION

Your affiant asks for this court to consider the enclosed appeal.

To please accept your affiants honest apology for his mistake and grant TIME SERVED for the charge of Improper Influence in Official Matters.

Sincerely,
Christopher Puelus

Jan 30 13 03:32p

BIA ENA 7757 551

57572551

p.15

FAMILY ANCESTRY COVER

Can be verified and confirmed
by tribes court clerk / enrollment
chairperson Krystal Platero.

SACKETT FAMILY ERRORS

Opotune Kay, Las Vegas Paiute 1/2

Harry Sackett
Las Vegas Paiute 3/4

Eliza Sackett
Las Vegas Paiute 1/2

Hazel Key Henry
Las Vegas Paiute 1/2

Daisy O. Segmiller
Las Vegas Paiute 3/4

Beatrice Domingo
Moapa Paiute n/a

Bessy Hovietz
Moapa Paiute n/a

David Sackett
Las Vegas Paiute 1/4

Isidoro Lopez
Las Vegas Paiute 5/8

Refinda Lopez
Las Vegas Paiute 5/8

These are Bld. Cards
according to tribes own
record of history, the
1940 census roll.
CAN'T BE CHANGED

reg. 10112

Jan 30 13 03:33p

BIA ENA 11/9/07/2001

11/9/07/2001

p.10

Jan 30 13 03:33p

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p.17

BENNY TSO, ROBERT SEGSMILLER FAMILY ERRORS

Chairperson

Council Member

Opotune Kay 1/2 (1940 Census Roll Base Enrollee)

1940 Census Roll

Daisy O. Segsmiller 3/4 (1940 Census Roll Base Enrollee)

1940 Census Roll

Mildred Segsmiller?

Benjamin Segsmiller

1940 Census Roll

4/4 Morapa

Benny Tso?

Robert Segsmiller?

TSO

Nov 20 11/2

Those ERRORS determined for these Frye petitioners disenrollments was between these Frye Pet. mother Gladys Lopez's bld. qtm. of 5/8 and her mother Daisy O. Segsmiller's bld. qtm. of 3/4. Tribal Council concluded these Frye Pet. reinstatement to tribal members was due to their mother as a base enrollee, Las Vegas Paiute.

These ERRORS now lie between Benny Tso's LV Paiute lineal ancestor and grandmother Daisy O. Segsmiller of 3/4 bld. qtm. and her mother the family matriarch Opotune Kay of 1/2 bld. qtm.

Benny Tso and his own LV Paiute history not only conflicts with his first cousin Debra Farris LV Paiute family history but will now conflict with those remaining tribal council members and family relations with bld. qtm's. no longer equal mathematically by perpetuation. Robert Segsmiller equally related.

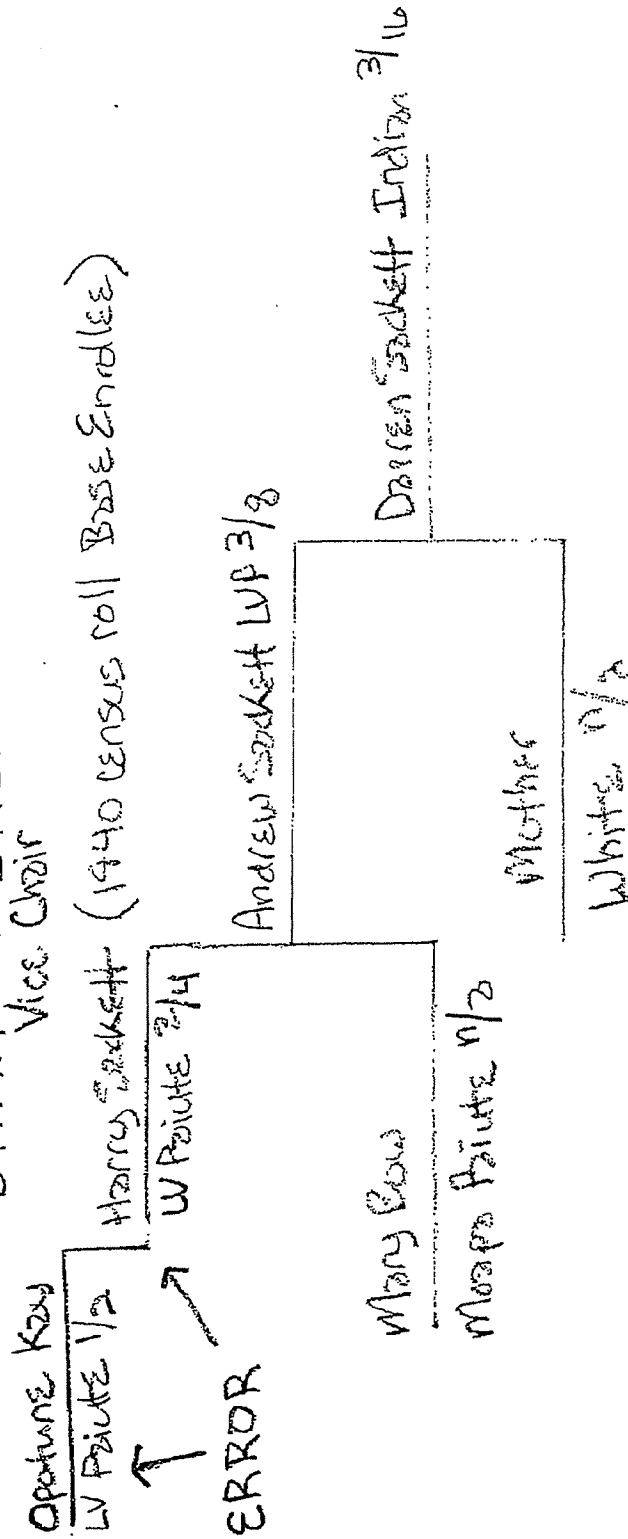
Jan 30 13 03:33p

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DARREN SACKETT FAMILY ERRORS



Vice Chair Darren Sackett does meet an Indian bld. atm. (3/16) as a lineal descendant of a 1940 census roll base enrollee. He does not meet the 1/4 bld. atm. as a LP PUTE without the bld. atm of another individual ancestor (Mary Bow).

Darren Sackett and his bld. atm. will conflict with family relation and fellow council member Debra Faris as a Disenrolled who's bld. atm. is derived directly from a parent and a 1940 base enrollee (Clayds Lopez 5/8). Those ERRORS are now between grandfather Harry Sackett 3/4 (Base Enrollee) and family patriarch Opotune Key 1/2 (Base Enrollee). Darren Sackett's bld. atm. if now is now in question?

Jan 30 13 03:34p

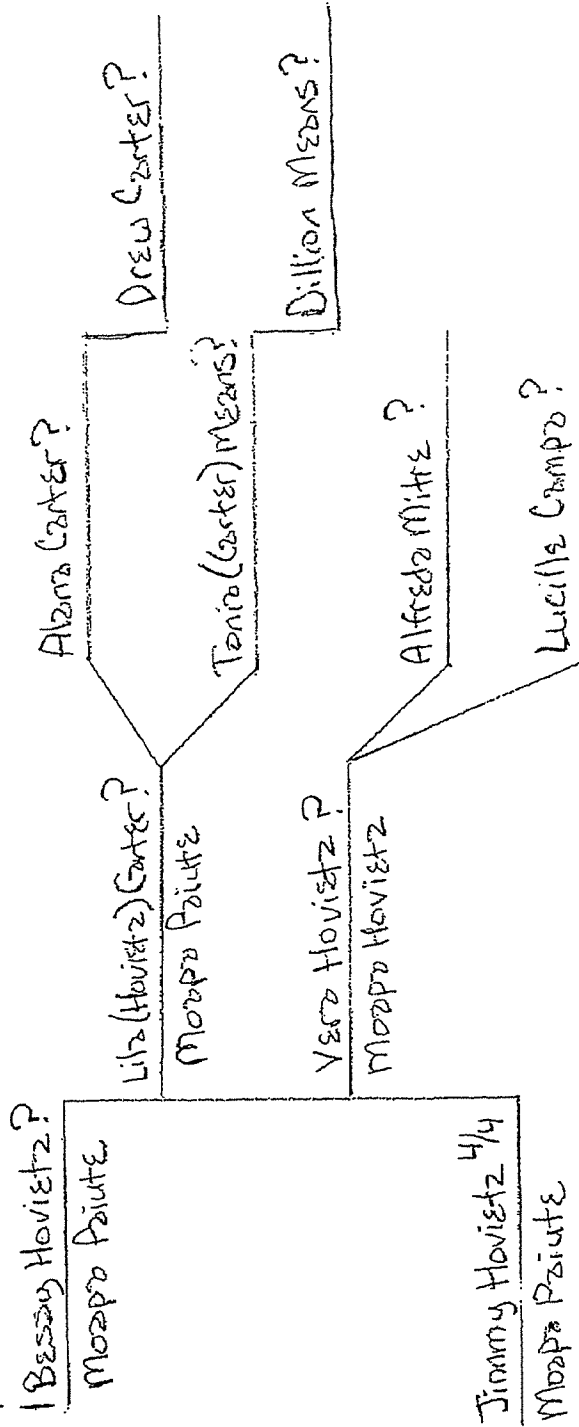
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p.19

R9010101

Opotune Kay 1/2 (1940 Base Enrollee) HOVIETZ FAMILY LIES
 Las Vegas Paiute Councilwoman LUCILLE CAMPB



Without being acknowledged by the LUPINTS FILES 1940 census roll. The persons Bessy Hovietz, Lila Hovietz, Vera Hovietz being born before 1940. Their bld. qms. can only be assumed.

Such people as previous council members Tania C. Means, Alfredo Mitre and current council member LUCILLE CAMPB are assumed as aligned descendants to one individual base enrollee.

The person Bessy Hovietz has no valid ties to the person and base enrollee, Conkett Family, mentioned Opotune Kay. Therefore deferring the 1940 census roll blood quantum-wise. Councilwoman Lucille Campb's LUPINTS membership is unconstitutional in two ways. By bld. qm. and family ancestry via relation.

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Opertune Key 1/2 (1940 Base Enrollee) ANDERSON FAMILY LIES

Los Vegas Paiute

Beatrice?

Mozapzo Paiute

Bill Anderson 4/14

mozapzo Paiute

Kenneth Anderson?

Mozapzo Paiute

Curtis Anderson?

Kenny Anderson?

Genevra Jake 4/14

Utah Paiute

Andrew Anderson?

Without being acknowledged by the LV Paiute Tribes 1940 census roll. The person Beatrice, Kenneth Anderson being born before 1940. Their old. qtm's can only be assumed.

Such people as previous council member Kenny Anderson and current council member CURTIS ANDERSON are assumed as online descendants to one individual base enrollee.

The person Beatrice has no valid ties to the person and base enrollee, Sackett Family matrarch Opertune Key. Therefore defeating the 1940 census roll blood quantum - wise.

Council Member Curtis Anderson's LV Paiute membership is unconstitutional in two ways. By old. qtm and family ancestry via relation.

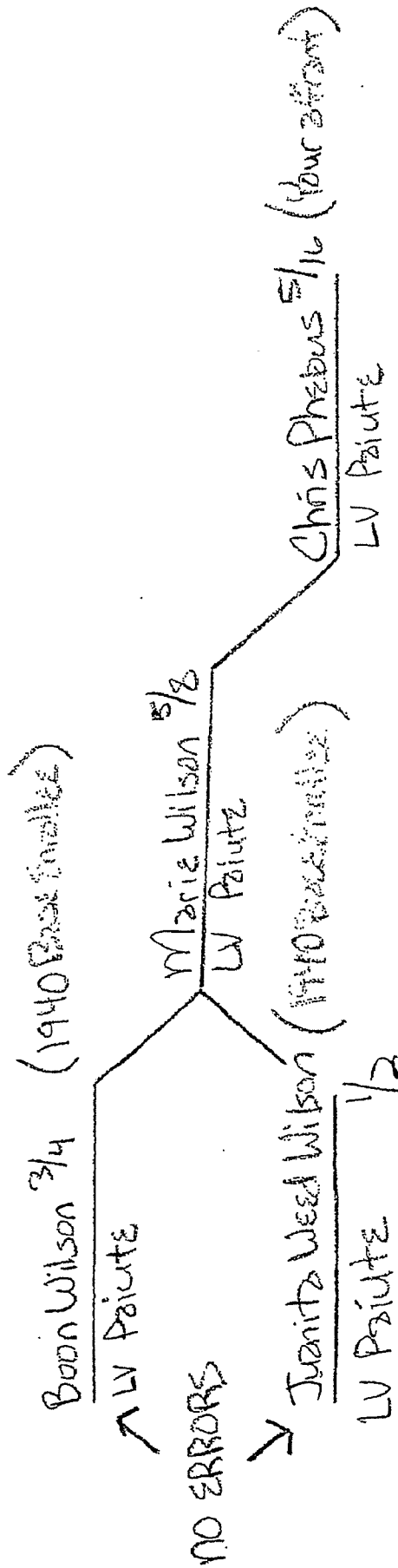
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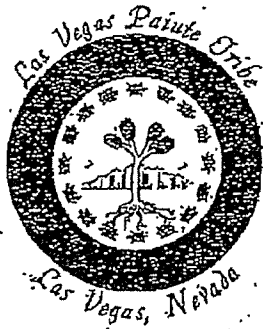
CHRIS PHEBUS FAMILY ANCESTRY



1940 Base Roll bld.
 adm's CAN NOT
 BE CHANGED.

Jan 30 13 03:35p BIA ENA 7757 551
Jan 17, 2013 10:34AM

57572551 p.22
No. 35/3 P. 6



Las Vegas Paiute Tribe

Benny Tso
Tribal Chairman

February 9, 2009

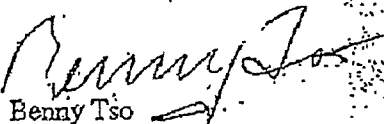
Certificate of Indian Blood

To Whom It May Concern:

This is to certify that Christopher Phebus Date of Birth July 31, 1969 who is a Blood
descendant (son) of Marie Wilson Date of Birth July 11, 1942 who is of 3/8 Southern Paiute
Blood and an enrolled member of the Las Vegas Paiute Tribe with enrollment number of LVP1
83-22/99-023

I hereby certify that the above information is true and exact based on the Enrollment/Census
records of the Las Vegas Paiute Indian Tribe.

Thank you,


Benny Tso
Tribal Chairman

Jan 30 13 03:36p

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**Minneapolis American Press/
Minneapolis News**

Paul law professor to hear Las Vegas Paiute appeal

Clara NiiSka

Jo Brooks Hunter, Associate Clinical Professor at Hamline University School of Law in St. Paul, is one of the three judges appointed by the Las Vegas Paiute tribal council to hear a controversial tribal court appellate case of the Las Vegas Paiute tribal court, Krishna Terry Carpenter, et al. v. Las Vegas Paiute Tribal Council. Brooks Hunter has also served as an appellate judge for the Turtle Mountain Chippewa tribal court, the Mille Lacs Winnebago tribal court, and the supreme tribal court of the Ho-Chunk Nation, formerly the Wisconsin Winnebago. She is an enrolled Ho-Chunk member.

Brooks Hunter declined to be interviewed by *Press/ON*, refusing to answer even general questions about her understanding of tribal courts and the tribal legal system on U.S. reservations. She did provide photocopies of two of her published articles, one of them a brief overview, "Tribal courts in Minnesota," written with Anita Fineday for the Minnesota State Bar Association in 1999. That article and the other, entitled "Tribal court decisions: justice and legitimacy," raise additional questions, some of which this writer emailed to Brooks Hunter. She had not responded by press time.

Robert Clinton, Professor of Law at Arizona State University in Phoenix, has also been appointed in the *Carpenter et al. v. Las Vegas Paiute Tribal Council* case. He is the chief justice of the Winnebago supreme tribal court, an associate justice of the Cheyenne River Sioux tribal court of appeals, and has written extensively on federal Indian law and policy.

The third appellate judge is Paiute from northern Nevada.

Though Brooks Hunter and the other appellate judges were appointed by the Las Vegas Paiute tribal council to hear one case, the tribal council's Las Vegas attorney, David A. Colvin, emphasized that they were "not hand-picked." The tribal council is also represented at by at least three attorneys from the Minneapolis law firm Dorsey & Whitney.

enrollment in Las Vegas

The *Carpenter et al. v. Las Vegas Paiute Tribal Council* arises from the Las Vegas Paiute tribal council's disenrollment of about a quarter of the membership in what the appellant's brief describes as ex parte proceedings in June and July 1999. (Black's Law Dictionary defines ex parte as, "on one side only, by or for one party; done for, on behalf of, or on the application of, one party only.") The Las Vegas Paiutes own a smoke shop in Las Vegas, as well as other tribal enterprises including an "upscale golf and resort development" at Snow Mountain. In May 1999, each tribal member was receiving a per capita payment of \$5,845 per month. (Disenrolling 25% of the membership means that the remaining members get a corresponding raise in their per capita payments.)

According to one of the expatriate Las Vegas Paiutes, Debra Faria, in 1999 the tribal council is dominated by one family. On July 6, 1999, the tribal council passed a resolution that, "the meaning of Paiute Indian Blood has consistently meant ancestry derived from Southern Paiute Blood," and that enrollment applications past and present are being reviewed to ensure all enrollment requirements have been met."

The tribal council "corrected" Indian blood quantum under the redefined—or according to the tribal council "clarified"—enrollment criteria. For example, Manuel Lopez, who was born in 1906, worked as a miner, and died in an explosion in 1930, was transformed from "Indian" to "non-Indian" on the Las Vegas Paiute rolls. Documents obtained by *Press/ON* indicate that his mother, Saturnina, was "4/4 Paiute-Chemahuevi." Manuel's descendants, along with those of his brother Anthony, were among those disenrolled. In a letter dated July 23, 1999, they were notified by first-class mail that their "tribal membership with the Las Vegas Paiute Tribe is hereby terminated, effective immediately."

There is a poignant irony to the disenrollments. Although the Las Vegas Paiutes had lived in a "colony" on the outskirts of downtown since the 1900s, they were not federally recognized until 1970. The tribal council disenrolled individuals federally-recognized as Las Vegas Paiute twenty-nine years earlier.

The present tribal chairman, Curtis Anderson and his family, on the other hand, had been enrolled in the Indian Peaks Band of Paiute Indians of Colorado. Expatriate Las Vegas Paiute Debra Faria posted documents on her website, <http://www.paiutecorruption.com/>, indicating that Curtis Anderson was involved with Indian Peaks Band affairs as late as 1981.

The expatriate Paiutes' assert in their appellate brief, on the other hand, that, "the loss of their membership in the Las Vegas Paiute Tribal Rolls cannot be appreciated unless one considers that the Expatriate Members' ancestry, heritage, life commitments, cosmology and the fact that they identify themselves under no other appellation. They are Las Vegas Paiute Indians whether the current Tribal council acknowledges that fact or not."

According to the expatriates' attorney, "the BIA does not recognize the disenrollments." Under the Indian Reorganization Act (IRA), the Secretary of the Interior retains authority over tribal councils organized under THE IRA. The Las Vegas Paiutes' tribal constitution provides that the tribal

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Las Vegas tribal court

disenrolled Indians went to tribal court—and won. In his June 2001 opinion, tribal court judge Terry Coffing, who also works as a Las Vegas attorney, concluded that, “by substituting the term ‘Paiute Indian Blood’ with ‘Southern Paiute Blood,’” the tribal council’s ‘clarification’ effectively amends the Las Vegas Paiute Tribe Constitution in a manner not authorized under Article IX of the Constitution and is therefore unenforceable.” If the tribal constitution is to be amended, the tribal court ruled, a referendum would be required.

The tribal council argued that the tribal court is “a legislatively created court with a limited jurisdictional grant”—the constitution and bylaws of the Las Vegas Tribe of Paiute Indians” does not provide for the creation of a tribal court. The tribal court asserted jurisdiction over the case.

When the tribal court found for Carpenter, et al.—the disenrolled Las Vegas Paiutes—the tribal council appealed. The tribal court “has no general authority to review acts of the Tribal Council, and certainly no authority to review Council actions to pass upon their constitutionality,” the tribal council argued in its appeal brief.

In its reply brief, the tribal council expanded on its argument that tribal council authority was not subject to legal challenge in the tribal court. Arguments for the tribal council quoted “noted Indian law expert” Felix Cohen’s observation, in the 1982 edition of the Handbook of Federal Indian Law, who observed that, “in practice, tribal courts are often subordinate to the political branches of tribal governments.” Without any apparent embarrassment, the tribal council wholeheartedly agrees: “The tribal court for the Tribe is no exception. As the Tribal Council pointed out in its opening memorandum, the tribal court is not a constitutionally created court. As such, it is not a co-equal branch of the Las Vegas Paiute Tribal Government. Rather, it is a subordinate entity vested only with those powers given to it by the Tribal Council.”

The Las Vegas Paiute constitution is among the few I.R.A. tribal constitutions which includes a Bill of Rights. Article I provides that, “no member shall be denied any rights or privileges enjoyed by other citizens of the United States, including but not limited to freedom of religion, speech, assembly, science, due process of law,” and also incorporates the Indian Civil Rights Act into the tribal constitution. “Sovereign immunity” prevents the tribal court from reviewing actions of the tribal council, then presumably the applicable legal system for enforcing the rights guaranteed to Las Vegas Paiutes in their tribal constitution would be U.S. federal courts. Whether or not the tribal constitution implies a waiver of tribal council sovereign immunity is an interesting question. Does the “tribal sovereignty” of the tribal council negate the rights guaranteed to tribal members in the tribal constitution, rendering them, as the expatriate Paiutes claim, “nothing more than a right without a remedy. Such construction ... ignores the mandate of the Supreme Court of the United States.”

Banishment

Expatriate Debra Faria, who grew up in the Las Vegas Paiute colony, reacted to what she says is an attack by a “corrupt” government on her identity as a Las Vegas Paiute Indian: by posting a website and by planning to demonstrate at a televised golf tournament held at the Las Vegas Paiute’s resort on October 9th, 2001. Tribal court judge Coffing issued a restraining order barring her from demonstrating on-reservation, so she demonstrated on the ‘white side’ of the reservation line. The tribal council responded by ‘indefinitely’ banishing Faria from the reservation, she says “for exercising my freedom of speech.”

At press time, Faria was still banished: banned from visiting her friends and relatives who live on the reservation, as well as barred from the graves of her mother, grandmother, brother and other family members buried on the reservation.

St. Paul law professor

The termination of the fate of Faria and the other expatriate Las Vegas Paiutes presently rests on the decision of an associate professor at Hamline University School of Law, Dr. Brooks Hunter, along with the two other specially-appointed tribal court appellate judges.

Brooks Hunter has written that the “presence” of tribal elders validates “the importance of the creation of a tribal court system to reflect what is important to a particular tribe,” and cited as an example an individual “tribal elder” stating, in Ho-Chunk, that a judge of the tribal court of appeals did not disqualify herself even though she was closely related to both the lay advocate and the trial court judge.

According to Brooks Hunter, “the tribal elder stated that the justice understood her role within her culture and her tribe,” and therefore her decision would be fair despite the close family relationships.

Brooks Hunter also writes of “incorporat[ing] tribal custom and tradition” into tribal court decisions, and gives as an example a tribal court’s “utiliz[ation] of a text written by an anthropologist” as a “neutral source” of information about tribal customs.

The Las Vegas Paiute tribal court of appeals has not yet scheduled oral arguments in *Carpenter et al. v. Las Vegas Paiute Tribal Council*. The court is watching.

back

next

LAS VEGAS PAIUTE TRIBAL COURT
CLARK COUNTY, NEVADA

ENTERED

JAN 16 2013

LAS VEGAS PAIUTE
TRIBAL COURT

Las Vegas Paiute Tribe,)
) CR12-008
Plaintiff,)
)
vs.)
)
Christopher Phebus,)
)
Defendant)

ORDER

The Defendant, Christopher Phebus, having been convicted of Las Vegas Paiute Tribal Law & Code 5-60-020 Improper Influence on Official Matters, on or about December 27, 2012. Mr. Phebus is in proper person and in the custody of the Las Vegas Paiute Chief of Police and having been transferred to the Owyhee Detention Facility.

The Court hereby orders that Mr. Phebus' letter, entitled "Motion", will be treated as a Notice of Appeal and the remaining matters concerning future charges against Mr. Phebus are denied as being premature.

The Clerk is directed to convene an appellate tribunal.

Dated this 16th day of January 2013,



Cal J. Potter, III
Chief Judge

EXHIBIT 11

EXHIBIT 11

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IN THE COURT OF APPEALS
FOR THE LAS VEGAS PAIUTE TRIBAL COURT

CHRISTOPHER W. PHEBUS,

No. CA13-001

Appellant,

vs.

THE LAS VEGAS TRIBE OF PAIUTE
INDIANS,

Respondent.

RESPONDENT'S APPEAL BRIEF
APPEAL FROM ORDER AND JUDGMENT OF CONVICTION OF THE
LAS VEGAS PAIUTE TRIBAL COURT,
THE HON. CAL J. POTTER III, TRIBAL COURT JUDGE

Filed in L.V. Paiute Court

Date: 2/15/13 Time: 2:00

Court Clerk: [Signature]

Patrick J. Murch
McDonald Carano Wilson LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Tel: (702) 873-4100
Attorney for Respondent

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McDONALD-CARANO-WILSON
 2300 WEST SAHARA AVENUE - SUITE 1200 - LAS VEGAS, NEVADA 89102-4395
 PHONE (702) 873-4100 - FAX (702) 873-9986

TABLE OF AUTHORITIES

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1 **STATEMENT OF THE ISSUES¹**

2 1) Whether the evidence was sufficient to prove, beyond a reasonable doubt, the
3 elements of the charge for which Phebus was convicted.

4 2) Whether, in light of all of the circumstances relevant to this matter, the sentence
5 imposed constitutes an abuse of the tribal court's discretion, or cruel and unusual punishment.

6 **STATEMENT OF THE CASE**

7 The Tribe filed a criminal complaint in November 2012, charging Phebus with violating
8 Tribal Code Section 5-60-020 (Improper Influence in Official Matters), based on Phebus' threats
9 to throw a rock through the window of the office of Don Belcher, the tribal Chief of Police.
10 Respondent's Appendix (RA) Tab 1. Following a trial to the bench in December 2012, the tribal
11 court adjudicated Phebus guilty as charged and imposed a six-month jail sentence. RA Tab 2.

12 On January 16, 2013, Phebus filed a document entitled "Motion" in the tribal court,
13 wherein he requested that the sitting tribal court judge, Cal J. Potter III, "be removed from all
14 future court cases" involving Phebus. RA Tab 3. The same day, the tribal court entered and filed
15 an order directing that Phebus' Motion would be "treated as a Notice of Appeal." RA Tab 4. The
16 court denied Phebus' recusal motion as premature. *Id.*

17 Phebus' appeal brief (dated Jan. 10) was filed on March 18, 2013. Phebus has not
18 contested his conviction, but requests that the Court commute his sentence to time served.

19 **STATEMENT OF FACTS**

20 **I. INTRODUCTION**

21 In 1999, the Las Vegas Paiute Tribal Council voted to disenroll approximately one-fourth
22 of the then-tribal members, including Phebus. Between 1999 and the present, Phebus has
23 engaged in a continuous course of verbal abuse, harassment, intimidation, threats of physical
24 violence, and other illegal or socially unacceptable conduct directed at tribal council members,

25 ¹ Appellant Christopher W. Phebus has only requested that the Court commute his sentence to
26 time served; he has not contested the sufficiency of the conviction in the underlying case.
27 Nevertheless, pursuant to the Order of Stay on Appeal, Temporary Release and Restraining Order
28 entered by the Court on May 6, 2013, the Las Vegas Paiute Tribe addresses the two issues
identified in this section.

1 members of the tribal police department, the tribal court, and any other individuals who he
2 believes have caused him harm relative to his disenrollment. As a result, Phebus has compiled an
3 extensive history before the tribal court, including multiple stints in jail, thousands of dollars in
4 fines, and at least one extended banishment from tribal property.

5 The order and judgment of conviction from which the present appeal arises pertains to an
6 incident that is entirely consistent with Phebus' behavior during the past decade: in November
7 2012, less than three weeks after being released from jail following an arrest and conviction on a
8 disorderly conduct charge stemming from an incident in which he used profanity and caused a
9 disturbance at the tribal police department, Phebus returned to the police department and
10 threatened to throw a rock through the front window of Chief Belcher's office because (1) Chief
11 Belcher would not assist Phebus in obtaining a copy of a court order pertaining to his
12 disenrollment from the Tribe's general counsel; and/or (2) Phebus believes that Chief Belcher
13 created a false Certificate of Indian Blood and/or removed or altered documents contained in
14 Phebus' medical file. The next day, Phebus returned to the police department with a large rock
15 wrapped in a copy of his Certificate of Indian Blood, and informed the dispatcher that he "had
16 something" for Chief Belcher.

17 As a result of that incident, and based on his incriminating admissions and refusal to
18 accept responsibility or demonstrate remorse for his actions, Phebus was convicted of the crime
19 of Improper Influence in Official Matters and sentenced to six months in jail. Phebus now seeks
20 an order commuting the sentence to time served, characterizing his conduct that led to the
21 sentence as a "mistake."

22 As discussed below, the Court should affirm the judgment of conviction and sentence
23 because the trial record clearly demonstrates that the Tribe met its burden of proving, beyond a
24 reasonable doubt, all elements of the crime for which Phebus was convicted. Moreover, in light
25 of Phebus' extensive history of engaging in similar threatening conduct and repeatedly refusing to
26 comply with the tribal court's orders, the court did not abuse its discretion in sentencing Phebus
27
28

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1 to the maximum term of imprisonment permitted for the crime. Finally, Phebus' sentence was
2 not constitutionally cruel and unusual.

3 II. RELEVANT FACTS

4 A. Relevant Background Facts.

5 In order to fully address the questions raised by the Court, the Tribe must first briefly
6 discuss certain relevant issues pertaining to Phebus' history with the Tribe, the tribal court, and
7 the tribal police department.²

8 1. General Background Information.

9 Phebus was enrolled as a member of the Tribe between 1983 and 1999. In July 1999, the
10 Tribal Council voted to disenroll approximately one-fourth of the then-tribal members, including
11 Phebus.

12 Following his disenrollment, Phebus has been cited, arrested, convicted, and/or sentenced
13 numerous times for engaging in illegal and/or socially inappropriate conduct while attempting to
14 persuade the tribal court, tribal members, tribal police officers, and tribal council members that
15 his disenrollment was improper. He has consistently disregarded the orders of the tribal court,
16 which has resulted in several jail sentences for contempt, and at least one trespass order that
17 barred him from being present on tribal property for a period of two years.

18 2. Jurisdictional Determination.

19 Phebus routinely raises his disenrollment as both a barrier to the tribal court's jurisdiction
20 and a justification for his extensive criminal history. On at least two occasions, however (most
21 recently in October 2011), the tribal court expressly determined that it has jurisdiction over
22 Phebus pursuant to United States v. Bruce, 394 F.3d 1215 (9th Cir. 2005), based on his status as
23 an Indian. See, e.g., RA Tab 5 at 6:10-11:11; Tab 6 at p. 2.

24
25 ² Certain information contained in this section was not specifically addressed at the trial to
26 which this appeal pertains. Nevertheless, a brief discussion of such information is warranted to
27 provide the Court with the necessary context to resolve the sentencing issue presented in this
28 appeal. Information supporting any factual issues that were not addressed at trial should be
contained in Phebus' tribal court file, the entirety of which the tribal court expressly took into
account in connection with its sentencing decision.

1 **3. Phebus' Recent Tribal Court History.**

2 Phebus' recent tribal court record demonstrates that he has engaged in threatening and/or
3 disruptive conduct that is substantially similar to the conduct upon which his current conviction is
4 based.³

5 a. Disorderly Conduct (Case No. CR11-004).

6 On January 31, 2011, the Tribe filed a criminal complaint in Case No. CR11-004, alleging
7 that on January 28, 2011, Phebus entered the tribal police department and requested that Chief
8 Belcher give Phebus his "original paperwork." RA Tab 7. After Chief Belcher informed Phebus
9 that Belcher would speak to the clerk of the court about Phebus' request, Phebus said, "you don't
10 do a fucking thing." Id. He ignored Chief Belcher's directives to calm down, continued using
11 profanity, and slammed doors. Id. Phebus was placed under arrest and charged with disorderly
12 conduct. Id.

13 At the trial on February 17, 2011, among other things, Chief Belcher testified regarding
14 certain allegations in the complaint, and stated that Phebus slammed the front door to the police
15 department hard enough to cause the Chief to believe that the glass would shatter. RA Tab 8 at
16 5:11-11:21. Tribal police officer Darryl Dawkins also testified that Phebus "was yelling at
17 [Belcher] that it wasn't right, that he needed his paperwork . . . , and as he got ready to leave out
18 the door he yelled out, 'Fuck you,' and slammed the door" Id. at 12:6-16:8.

19 Thereafter, Phebus admitted that he "did come over [to the police department] and did get
20 upset," as alleged in the complaint. Id. at 17:13-21; 23:12-25. He attempted to explain his
21 conduct by stating that he was upset because the court clerk allegedly failed to return certain
22 documents and a DVD that Phebus had previously submitted in connection with his disenrollment
23 matter, and Chief Belcher did not immediately assist him in retrieving those items. Id.

24 After the tribal court heard all of the evidence, it adjudicated Phebus guilty as charged and
25 imposed a fine of \$2,000.00, with a credit of \$100.00, payable by community service at the rate
26

27 ³ The current tribal court judge, who was not involved in any of the court proceedings pertaining
28 to Phebus' disenrollment, presided over all of the proceedings discussed in this section.

1 of \$100.00 per eight hours worked, plus incarceration for 20 days at the City of North Las Vegas
2 Detention Center, with credit for time served of 21 days. Id. at 24:3-26:3.

3 b. Harassment and Stalking (Case No. CR11-005).

4 Also on January 31, 2011, the Tribe filed a separate criminal complaint in Case No.
5 CR11-005, alleging that on December 6, 2010, Phebus entered the tribal police department
6 (which also houses the tribal court) and demanded to speak to the court clerk. RA Tab 9.
7 Although Phebus did not have an appointment, the clerk agreed to meet with him, at which time
8 Phebus "launched into a verbal tirade wherein [he] threatened to throw rocks through the
9 windshields of the car belonging to [the clerk], as well as the cars of [the then-tribal judge and
10 tribal chair]." Id. Phebus was not arrested as a result of the incident.

11 The matter was tried to the bench on February 17, 2011. RA Tab 10. The Tribe called the
12 court clerk, Danae Bright-Shimp, as its only witness. Id. Ms. Bright-Shimp testified that Phebus
13 came in to see her on December 6, 2010, requesting "some paperwork." Id. at 7:8-15. When Ms.
14 Bright-Shimp declined to assist Phebus with completing certain forms, Phebus "went off on a
15 verbal tirade," stating that he was going to "cuss out" the then-sitting tribal court judge the next
16 time he went to court. Id. at 7:8-8:5. Phebus also stated that he was going to throw rocks through
17 Ms. Bright-Shimp's window and a window at the tribal administration office. Id. at 7:16-8:5.
18 Thereafter, he left Ms. Bright-Shimp's office through an alarmed side door, ignoring her request
19 that he not use that door. Id. at 8:9-22. Rather, Phebus "said he'd go out any fucking door he
20 wanted to[,] and he told [Ms. Bright-Shimp] to fuck off." Id. Ms. Bright-Shimp completed a
21 police report because she feared for her safety. Id. at 9:2-6.

22 Phebus then cross-examined Ms. Bright-Shimp, and inquired as to why she did not return
23 the DVD that was included with the paperwork that he had previously submitted to the tribal
24 court. Id. at 9:23-10:19. Ms. Bright-Shimp responded that Phebus did not request the DVD, she
25 could not return the original items that he had submitted, the DVD was included in his file, and
26 she would have made a copy of the DVD had he specifically requested it. Id.

After Phebus made a short statement to the court regarding, among other things, his need for the paperwork and DVD, the tribal court adjudicated Phebus guilty of the crime of harassment and sentenced him to a fine of \$2,500.00 with a \$100.00 credit, payable via community service at the minimum rate of 10 hours per week. Id. at 13:6-15:16; see also RA Tab 11.

c. Contempt (Case Nos. CR11-004 and CR11-005).

Between the February trials and October 2011, the tribal court conducted monthly status check hearings to ascertain Phebus' progress toward satisfying the sentencing requirements imposed in the foregoing cases. Specifically:

- On March 31, 2011, the court entered an order requiring Phebus to show cause why he should not be held in contempt for failing to comply with the community service requirements that were imposed in connection with the February 17 convictions.
- On April 21, 2011, the court held a hearing on the order to show cause, and held Phebus in contempt of court. The court entered an order (the April 21 Order) sentencing Phebus to 60 days in jail, suspended. The court also suspended six days of jail time that were remaining on Phebus' conviction for disorderly conduct in Case No. CR11-004. In addition, the court ordered Phebus to attend anger management classes and complete the remainder of his community service at a rate of no fewer than 15 hours per week.⁴
- On May 19, 2011, the tribal court conducted a status check hearing, during which it determined that Phebus was satisfactorily completing his community service hours, but had not completed anger management classes.
- On June 16, 2011, the tribal court conducted another status check hearing, during which it determined that Phebus was satisfactorily completing his community service hours, but had not completed anger management classes.
- On July 20, 2011, the tribal court conducted another status check hearing, during which it determined that Phebus had not made satisfactory progress on his community service hours, and failed to complete anger management classes.
- On September 14, 2011, the tribal court conducted another status check hearing, during which it determined that Phebus had not made satisfactory progress on his community service hours, and failed to complete anger management classes. The court also entered

⁴ The tribal court granted Phebus a considerable amount of latitude during the April 21 hearing, providing Phebus with numerous opportunities to avoid an immediate jail sentence. RA Tab 12. In addition, the tribal court informed Phebus that the "next juncture [in Phebus' disenrollment case] is the tribal council. That's where you have to go. That's the supreme court of this judicial system." Id. at 11:18-13:2. The court also rescinded any prior orders that prohibited Phebus from entering the tribal administration office so that Phebus could appeal his disenrollment to the tribal council. Id. at 22:18-23:11.

1 an order requiring Phebus to show cause why he had not complied with the February 17
2 trial order.

- 3 • On October 19, 2011, the tribal court held a hearing on the order to show cause, during
4 which it reiterated that it has jurisdiction over Phebus pursuant to Bruce, 394 F.3d 1215.
In addition, the court held Phebus in contempt for violating the April 21 Order. The court
imposed the remainder of Phebus' 66-day suspended sentence.

5 RA Tab 6.

6 d. Trespass Petition (Case No. CV11-007).

7 Phebus was released from the custody of the Bureau of Indian Affairs on December 23,
8 2011. RA Tab 13. A mere three days later, Phebus allegedly entered the tribal police department
9 and began harassing a tribal member. RA Tab 14, Exh. 1. Based on Phebus' tribal membership
10 status and his extensive history before the tribal court, the tribal prosecutor filed a petition to
11 permanently exclude Phebus from all tribal property. Id.⁵

12 With the exception of two status check hearings on the trespass petition, Phebus had no
13 documented interactions with any tribal members, law enforcement officers, or employees
14 between December 2011 and April 2012. Accordingly, on April 18, 2012, the Tribe withdrew the
15 trespass petition without prejudice to refiling. RA Tab 15 at 4:17-6:20.

16 e. Disorderly Conduct (Case No. CR11-007).

17 Phebus had no more encounters with the tribal police until October 10, 2012, when he was
18 arrested for disorderly conduct and transported to the Henderson Detention Center. RA Tab 16.
19 Phebus was arraigned and released from custody the next day. RA Tab 17.

20 The matter was tried to the bench on October 17, 2012. The Tribe's evidence
21 demonstrated that, on the afternoon of October 10, Chief Belcher was meeting with several tribal
22 members and employees at the tribal police department. RA Tab 18 at 10:15-11:25. As he came
23 out of the meeting, Phebus entered the police department and began yelling at him. Id. at 11:14-
24 14:1. When Chief Belcher asked Phebus to stop yelling, Phebus yelled, "Fuck you, you're
25 fucking my family." Id. at 12:1-11. Phebus continued yelling and using profanities as Chief
26 Belcher went to speak to him, and he was eventually arrested. Id. at 12:1-17.

27 ⁵ Pursuant to Title 17 of the Tribal Code, the prosecutor or the Tribe may initiate trespass
28 proceedings against non-tribal members who engage in certain specified conduct on tribal land.

1 The tribal court noted its concern that Phebus' outburst was potentially protected speech
 2 under the First Amendment. Id. at 15:24-14:10. In addition, the court gave Phebus an
 3 opportunity to present and explain in detail a chart pertaining to his disenrollment matter. Id. at
 4 19:24-22:20. Furthermore, the court acknowledged the procedural history of Phebus'
 5 disenrollment, and reminded him that while he could petition the Tribe about the disenrollment,
 6 he could not "go in and cause problems with [Chief Belcher.]" Id. at 24:1-25:2. The court also
 7 reminded Phebus that the court, the tribal prosecutor, Chief Belcher, and the tribal police could
 8 not do anything about his disenrollment. Id. at 25:18-26:7. Furthermore, the court advised
 9 Phebus that he might have a federal court remedy. Id.; see also id. at 30:22-32:6. Finally, the
 10 court reiterated that Phebus was subject to the court's jurisdiction based on his status as an Indian.
 11 Id. at 26:8-27:18.

12 Following Phebus' presentation, the court adjudicated Phebus guilty as charged, and
 13 sentenced him to time served. Id. at 30:22-31:6.

14 **B. Current Conviction.**

15 Less than three weeks later, Phebus was arrested for the offense to which this appeal
 16 pertains. RA Tab 1. The matter was tried to the bench on December 27.

17 **1. Non-Party Witness Testimony.**

18 **a. Testimony Regarding Incident.**

19 Chief Belcher testified that Phebus entered the tribal police department on November 6,
 20 2012, and demanded that Chief Belcher obtain a copy of a court order from Dave Colvin, general
 21 counsel for the Tribe. RA Tab 19 at 4:24-5:19. Chief Belcher informed Phebus that he could not
 22 provide Phebus with any court orders or other paperwork, and that Phebus should direct his
 23 request to Colvin or hire an attorney to obtain the information he was requesting. Id.; see also id.
 24 at 14:2-17. Phebus responded by getting loud and telling Chief Belcher that he had "kicked
 25 [Phebus'] family in the ass." Id. at 6:3-20.

26 After Chief Belcher told Phebus to calm down, Phebus stated, "if I go up to the [tribal]
 27 health clinic and my Certificate of Indian Blood's in the file up there, I'm going to get it out, I'm
 28

1 going to wrap it in a rock, and I'm going to throw it through your office window." Id. Shortly
2 thereafter, Phebus left the police department. Id.

3 Phebus returned to the dispatch desk of the police department the next day, holding a rock
4 that was approximately 6-8" in diameter and wrapped in a piece of paper. Id. at 22:6-25:14. He
5 directed the dispatcher, Everson Nakai, to "tell Belcher when he comes in tomorrow I got
6 something for him." Id. Phebus then left the police department.

7 In response to Phebus' threat, Chief Belcher had to inform any individuals who came to
8 visit him in his office that someone had threatened to throw a rock through his window, which
9 was accessible from the front of the building. Id. at 7:17-8:13.

10 b. Testimony Regarding Phebus' Certificate of Indian Blood.

11 On cross-examination, Phebus accused Chief Belcher of "making a false document
12 [presumably, the Certificate of Indian Blood contained in Phebus' medical file] to put [Phebus] in
13 jail." Id. at 15:2-16.⁶ Chief Belcher then explained the history of the CIB: during one of Phebus'
14 previous BIA incarcerations, his mother requested that Chief Belcher assist Phebus in obtaining
15 medical treatment. Id. at 15:17-21:2. Chief Belcher contacted the BIA, which informed him that
16 it required a CIB to demonstrate that Phebus is a descendant of a Native American. Id.⁷
17 Accordingly, the then-tribal judge ordered that a CIB be prepared. Id. After Chief Belcher
18 received the CIB, he provided it to the BIA. Id. He does not know how the CIB came to be
19 placed in Phebus' medical file at the tribal health clinic. Id.

20 2. **Phebus' Defense and Admissions.**

21 After the Tribe presented its case-in-chief, Phebus presented oral testimony to the court in
22 connection with his defense, wherein he failed to offer any substantive evidentiary opposition to
23 the charge, and reiterated his ongoing argument that his disenrollment was improper. Id. at 35:8-

24 ⁶ Phebus contests the validity of his CIB because it allegedly does not accurately reflect his blood
25 quantum – the CIB states that Phebus is 3/8 Southern Paiute, while Phebus maintains that he is
26 5/16 Paiute.

27 ⁷ Without the CIB, the Tribe would incur the cost of Phebus' medical treatment during his
28 incarceration. Id.

1 36:12. Phebus also stated that he went to the police department on November 6 because he was
2 unable to obtain copies of certain papers that were allegedly previously included with his
3 Certificate of Indian Blood at the tribal health office, and he wanted to make an incident report to
4 that effect. Id. at 32:14-35:2. In addition, he stated that the court order that he requested from
5 Chief Belcher resulted in the sealing of the court files of certain disenrolled tribal members. Id. at
6 13:12-24.

7 When Phebus finished testifying, the tribal prosecutor cross-examined him:

8 Q. You admit that you spoke with Chief Belcher on November 6, 2012?

9 A. **Mm-hmm.**

10 Q. You admit that you stated to him that if your Certificate of Blood was at the
11 [tribal] health clinic, you would get it and throw it though his window with the rock, words to that
12 effect?

13 A. **To that effect.**

14 Q. Then you came back to the police station on November 7, 2012, correct?

15 A. **Mm-hmm.**

16 Q. And you had a rock in your hand?

17 A. **Mm-hmm.**

18 Q. And you heard Mr. Nakai describe the size of the rock?

19 A. **And even got it on video.**

20 Q. Would you agree that that statement is accurate, that the size of the rock was as he
21 described?

22 A. **Just like that.**

23 Q. [The rock] was wrapped in a piece of paper?

24 A. **Yeah, and the paper was [my] Certificate of Indian Blood.**

25 Q. You made a statement to the effect to tell Belcher when he comes in tomorrow I
26 have something for him?

27 A. **Mm-hmm.**

28

1 ...

2 Q. You admit that?

3 A. Mm-hmm.

4 Id. at 37:20-38:25.

5 **3. Conviction, Sentencing, and Incarceration.**

6 As a result of his testimony and the other evidence presented at trial, the tribal court
7 adjudicated Phebus guilty of violating Tribal Code Section 5-60-020, Improper Influence in
8 Official Matters. Id. at 40:17-41:1. The court stated that it had read Phebus "entire file," and that
9 it "[knew] everything" about Phebus' disenrollment case. Id. at 47:11-22. The court also gave
10 Phebus multiple opportunities to present mitigating arguments to avoid the six-month jail
11 sentence that the Tribe requested. Id. at 41:15-47:22. However, Phebus continued to raise
12 tangential issues in an attempt to justify the conduct that led to his conviction. Id. Accordingly,
13 the tribal court sentenced Phebus to six months in jail. Id. at 48:3-49:11. Thereafter, Phebus was
14 remanded to the custody of the Owyhee Detention Facility, a BIA facility in northern Nevada.

15 **ARGUMENT**

16 **I. SUMMARY OF ARGUMENT**

17 The Court should affirm the judgment of conviction because the trial record clearly
18 demonstrates that the Tribe met its burden of proving, beyond a reasonable doubt, all elements of
19 the crime for which Phebus was convicted. Moreover, in light of Phebus' extensive history
20 before the tribal court (including his history of threatening tribal members, employees, and
21 officials, and repeatedly refusing to comply with the orders of the tribal court), the court did not
22 abuse its discretion in sentencing Phebus to the maximum term of imprisonment permitted for the
23 crime. Finally, the sentence was not constitutionally cruel and unusual.

24 **II. STANDARDS OF REVIEW**

25 **A. Conviction.**

26 In reviewing whether a conviction was proper, an appellate court must determine
27 "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational
28

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1 trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”
 2 Jackson v. Virginia, 443 U.S. 307, 319 (1979). “This familiar standard gives full play to the
 3 responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence,
 4 and to draw reasonable inferences from basic facts to ultimate facts.” Id. Accordingly, the finder
 5 of fact has “broad discretion in deciding what inferences to draw from the evidence presented at
 6 trial,” and may “draw reasonable inferences from basic facts to ultimate facts.” Coleman v.
 7 Johnson, 132 S.Ct. 2060, 2064 (2012) (citations omitted).

8 **B. Sentencing.**

9 Appellate courts “generally review criminal sentences for abuse of discretion, and [they]
 10 will not overturn a district court's sentencing determination in the absence of procedural error or
 11 substantive unreasonableness.” United States v. Gonzalez-Aparicio, 663 F.3d 419, 426 (9th Cir.
 12 2011). “[A]n abuse of discretion may occur when (1) a court fails to consider a relevant factor
 13 that should have received significant weight; (2) a court gives significant weight to an improper
 14 or irrelevant factor; or (3) a court considers only the appropriate factors but in weighing those
 15 factors commits a clear error of judgment.” United States v. Haack, 403 F.3d 997, 1004 (8th Cir.
 16 2005) (citation and internal punctuation omitted).

17 **III. THE TRIBE PROVED ALL ELEMENTS OF THE CRIME BEYOND A 18 REASONABLE DOUBT**

19 **A. Legal Standards.**

20 **1. Improper Influence in Official Matters.**

21 Pursuant to Tribal Code § 5-60-020:

22 (a) A person is guilty of improper influence in official matters if he threatens
 23 harm to any public servant, including but not limited to tribal officials and judges,
 24 or to the relatives of public servants with the purpose of influencing a decision,
 opinion, recommendation, or other exercise of discretion.

25 (b) Retaliation of past official action shall be included under (a) above as a
 26 form of improper influence.

27 (c) Improper influence is a Class B offense.
 28

1 **2. Reasonable Doubt.**

2 “Reasonable doubt” is “one based on reason. It is not mere possible doubt, but is such a
3 doubt as would govern or control a person in the more serious affairs of life. After considering all
4 the evidence, if the [finder of fact has] a sincere and lasting belief in the truth of the charge, there
5 is not a reasonable doubt.” Tribal Code § 4-60-060(b).

6 **B. The Tribe Satisfied its Burden of Proof.**

7 The Tribe proved, beyond a reasonable doubt, all of the elements of the offense of
8 Improper Influence in Official Matters.

9 **1. Chief Belcher is a Public Servant.**

10 The Tribal Code does not define “public servant.” When a statute uses a term which it
11 does not define, courts give that term its ordinary or plain meaning. United States v. Daas, 198
12 F.3d 1167, 1174 (9th Cir. 1999) (citation omitted). A “public servant” is “a government official
13 or employee.” Merriam Webster’s Collegiate Dictionary, 1006 (11th ed. 2012). Chief Belcher is
14 employed by the Tribe as the Chief of the tribal police department. RA Tab 19 at 4:7-16.
15 Accordingly, Chief Belcher is a “public servant,” and the Tribe satisfied its burden of proof
16 relative to this element of the offense.

17 **2. Phebus Threatened Harm to Chief Belcher.**

18 In at least three ways, the Tribe demonstrated that Phebus threatened harm to Chief
19 Belcher.

20 a. Phebus Admitted That He Threatened Chief Belcher.

21 Phebus expressly admitted that he made a verbal threat to throw a rock through Chief
22 Belcher’s window, and that he tied his CIB around a rock, took it to the tribal police department,
23 and instructed the dispatcher to inform Chief Belcher that Phebus “had something” for Belcher.
24 Id. at 37:18-38:25; see also Appeal Brief at p. 9 (“[I] did threaten Belcher with the document CIB
25 tied to a rock”) Accordingly, Phebus cannot reasonably contest the Tribe’s proof of this
26 element of the offense beyond a reasonable doubt.

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b. Phebus' Statement Constituted a Threat.

In addition, Chief Belcher testified that on November 6, 2012, Phebus entered the tribal police department and demanded that Belcher obtain a copy of an unspecified order from tribal attorney Dave Colvin. RA Tab 19 at 4:24-6:20. Upon hearing that Chief Belcher could not comply with Phebus' request, Phebus stated that he was going to go to the tribal health office, obtain his Certificate of Indian Blood, wrap it in a rock, and throw it through Chief Belcher's window. Id. The Tribal Code does not require the accused to take any overt action and/or follow through on a threat of harm to a public servant; a threat is all that is required. See Tribal Code § 5-60-020. Phebus' statement, standing alone, is sufficient to satisfy this element of the offense.

c. Phebus' Conduct Constituted a Threat.

Finally, all remaining doubt regarding this element of the offense is alleviated by the fact that Phebus carried a large rock wrapped in a piece of paper into tribal police department, and instructed the dispatcher to inform Chief Belcher that Phebus "had something" for Belcher. RA Tab 19 at 22:6-25:14. Again, a threat of harm is all that is required; the individual being threatened need not hear the threat or be aware that it has been made. See Tribal Code § 5-60-030. Therefore, the fact that Chief Belcher was not present when Phebus presented the rock is irrelevant.

In short, the Tribe satisfied its burden of proof relative to the second element of the offense.

C. Phebus Intended to Influence a Decision or Other Exercise of Discretion by Chief Belcher, and/or to Retaliate for a Past Official Action Taken by Chief Belcher.

Finally, the Tribe demonstrated that Phebus intended to influence a decision or other exercise of Chief Belcher's discretion, and/or to retaliate for a past official action taken by Chief Belcher.

1 **1. Phebus Intended to Influence Chief Belcher to Obtain a Court Order**
 2 **from Tribal Attorney Dave Colvin.**

3 Immediately after Chief Belcher informed Phebus that Belcher could not assist Phebus in
 4 obtaining any court orders or other paperwork pertaining to Phebus' disenrollment case, Phebus
 5 threatened to wrap his CIB around a rock and throw it through Chief Belcher's window. RA Tab
 6 19 at 4:24-5:19. Viewing this evidence in the light most favorable to the prosecution, it is entirely
 7 reasonable to conclude that the tribal court found that Phebus intended to scare Chief Belcher into
 8 requesting and/or obtaining a copy of a court order from Dave Colvin. This finding, standing
 9 alone, is sufficient to satisfy the Tribe's burden regarding the final element of the offense.

10 **2. Phebus Intended to Retaliate Against Chief Belcher for**
 11 **Submitting Phebus' Certificate of Indian Blood to the BIA.**

12 Phebus made the following admissions at trial:

- 13 • He is upset that his CIB is contained in his tribal medical file (RA Tab 19 at 10:23-
 14 11:20;
- 15 • He believes that Chief Belcher created the CIB (id. at 10:23-11:20; 15:2-16);
- 16 • He believes that the CIB is inaccurate or false (id. at 10:23-11:20; 15:2-16);
- 17 • He believes that the CIB was created "for purposes of getting [him] in jail" (i.e.,
 18 the Tribe would not be able to put him in jail without the CIB) (id. at 19:24-20:16;
 19 28:20-29:6); and
- 20 • He believes that the Tribe uses the CIB to put him in jail (id. at 28:20-29:6).

21 Viewing those statements in the light most favorable to the prosecution, coupled with:
 22 (a) the fact that Phebus specifically mentioned his CIB when he threatened Chief Belcher; and (b)
 23 the fact that Phebus followed up on his verbal threat by carrying a rock wrapped in his CIB into
 24 the tribal police department, it is also entirely reasonable to infer that the tribal court concluded
 25 that the purpose for Phebus' threat was to retaliate against Chief Belcher for the role that Belcher
 26 played (in his official capacity as the tribal Chief of Police) in obtaining the CIB and/or delivering
 27 it to the BIA.
 28

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1 In sum, when the evidence is viewed in the light most favorable to the prosecution, the
 2 tribal court heard and considered sufficient evidence to determine that the Tribe proved the third
 3 element of the offense beyond a reasonable doubt. Therefore, the conviction was proper.

4 **IV. PHEBUS' SENTENCE WAS APPROPRIATE**

5 In light of Phebus' recent criminal record and his disregard for the tribal court's orders,
 6 the court did not abuse its discretion in sentencing Phebus to the maximum jail term permitted for
 7 the crime.

8 **A. General Legal Standards Pertaining to Sentence.**

9 **1. Sentencing Limits.**

10 Under the Tribal Code, Improper Influence in Official Matters is designated as a Class B
 11 offense, punishable by a maximum of six months' imprisonment, a fine of \$4,000.00, or both.
 12 See Tribal Code §§ 4-70-070 and 5-90-020.

13 **2. Sentencing Factors.**

14 "In determining the nature and duration of the penalty to be imposed, the Court shall take
 15 into consideration the previous conduct of the defendant, the circumstances under which the
 16 offense was committed, whether the offense was malicious or willful, whether the offender has
 17 attempted to make amends, and the state of the offender's mental health at the time of the offense
 18 and sentencing." Id. at § 4-70-090(a). The sentence imposed should be "consistent with the
 19 protection of the public, the seriousness of the offense, and the rehabilitative needs of the
 20 defendant." Id.

21 **B. The Tribal Court Did Not Abuse its Discretion in Sentencing Phebus.**

22 When the abuse of discretion factors are applied to this case (see Haack, 403 F.3d at
 23 1004), it is clear that the sentence does not constitute an abuse of the tribal court's discretion.

24 **1. The Tribal Court Did Not Fail to Consider a Relevant Factor that 25 Should Have Received Significant Weight.**

26 The tribal court expressly or impliedly considered all of the relevant sentencing factors
 27 prior to issuing its sentencing decision:
 28

1 a. Phebus' Previous Conduct.

2 The tribal court has reviewed Phebus' "entire file." RA Tab 19 at 47:11-22. In addition,
3 the current tribal court judge presided over all of the proceedings discussed above in Section
4 II(A)(3), so he is intimately familiar with Phebus' history of engaging in substantially similar
5 threatening conduct and verbal abuse that is directed at the tribal members and employees against
6 whom Phebus bears a grudge pertaining to his disenrollment. RA Tabs 5-18. He is also well
7 aware of Phebus' contempt for court orders. RA Tab 6. Moreover, the court noted that Phebus
8 engaged in the conduct to which this appeal pertains just days after being released from jail after
9 causing a similar disturbance at the tribal police department. Id. at 42:15-43:9. Finally, the court
10 recognized that Phebus' behavior is escalating. Id. at 48:3-49:6. Therefore, the court properly
11 took Phebus' previous conduct into account.

12 b. Circumstances Under Which Offense Was Committed.

13 Phebus committed the current offense shortly after being given credit for time served on
14 his previous disorderly conduct conviction (Case No. CR11-007). RA Tab 19 at 42:15-43:11. In
15 addition, his behavior escalated from a loud, profanity-laced outburst to a loud, profanity-laced
16 outburst that included a threat to harm Chief Belcher, followed by an overt demonstration of his
17 intent to follow through on the threat. The tribal court obviously recognized that Phebus learned
18 nothing from his prior conviction, and it properly considered the circumstances under which the
19 offense was committed.

20 c. Willfulness of Offense.

21 Phebus' historical course of conduct, coupled with his express admissions in the case to
22 which this appeal pertains, demonstrates that his conduct is willful. Moreover, the tribal court
23 expressly considered the willfulness of the offense, calling Phebus a "terrorist" who continues to
24 engage in a course of conduct that is intended to "cause trouble for the Tribe," and who shows no
25 remorse for his behavior. Id. at 42:15-43:19. The court also noted that Phebus "won't take
26 responsibility for anything [he's] ever done." Id. at 46:22-47:1. Accordingly, the tribal court
27 appropriately considered this factor.
28

1 d. Phebus' Attempt to Make Amends.

2 The court also noted that Phebus has made no attempts to make amends or otherwise
3 apologize for his conduct. Id. at 43:3-9 ("you're here to cause problems for the Tribe, and you
4 don't have any remorse. You feel you're the victim in all of these cases, and you continue to
5 terrorize people."); 47:11-22 ("all you want to do is cause more problems and you won't do
6 anything constructive . . ."); 48:12-49:6 ("I've let you get away and express yourself here in the
7 court, but your response then was to bring a rock here and threaten the chief, and you haven't
8 denied that. In fact, you felt that you were responsible for it."); 49:15-24 ("all you want to do is
9 make further accusations . . .") Therefore, the court properly considered this factor.

10 e. State of Phebus' Mental Health.

11 While the court did not expressly address the state of Phebus' mental health, the trial
12 transcript demonstrates that Phebus was fully able to participate in and understand the entire trial
13 proceeding. See generally RA 19. His coherent appeal brief provides further support for this
14 conclusion. Therefore, Phebus' mental health did not impede his ability to obtain a fair trial and
15 sentence.

16 f. Disenrollment.

17 The tribal court also gave due consideration to Phebus' disenrollment. As previously
18 discussed, the court has reviewed Phebus' entire tribal court file, and "know[s] everything about
19 his [disenrollment] case." Id. at 47:11-22. Nevertheless, Phebus' disenrollment has no effect on
20 the tribal court's jurisdiction over Phebus, nor does it permit Phebus to engage in "terroristic"
21 conduct. Accordingly, the tribal court gave Phebus' disenrollment all of the consideration that it
22 was due.

23 g. Mitigation.

24 Finally, the tribal court gave Phebus numerous opportunities to present a mitigation
25 argument against the Tribe's request that Phebus receive the maximum jail sentence permitted for
26 the offense. RA Tab 19 at 41:15-47:22. Rather than taking advantage of those opportunities,
27 Phebus continued to argue with the tribal court about the validity of his disenrollment, the
28

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1 jurisdiction of the tribal court, and other tangential issues. Id. Phebus cannot now complain that
2 his sentence is unfair, especially when the trial transcript makes clear that the tribal court would
3 have accepted even the most simple mitigation argument (i.e., had Phebus merely apologized for
4 his conduct, or shown the slightest amount of remorse, the tribal court would not have imposed
5 the full sentence). Id.

6 **2. The Tribal Court Did Not Give Any Weight to an Improper or**
7 **Irrelevant Factor.**

8 All of the court's comments regarding sentencing pertained to Phebus' escalating course
9 of conduct, his refusal to accept responsibility for his actions, his unwillingness to learn from
10 previous encounters with the court, and the court's concern for the safety of tribal members and
11 employees. Id. at 41:17-52:13. As discussed in the preceding section, all of those issues are
12 directly relevant to a proper sentencing analysis. Therefore, the tribal court did not give any
13 weight (let alone any significant weight) to an improper or irrelevant factor.

14 **3. The Tribal Court Did Not Commit a Clear Error of Judgment in**
15 **Weighing the Appropriate Factors.**

16 Finally, the tribal court expressly took "the protection of the public, the seriousness of the
17 offense, and the rehabilitative needs of the defendant" into account during sentencing. Tribal
18 Code § 4-70-090(a). See, e.g., RA Tab 19 at 45:28-23 ("What about the Tribe? What about the
19 people that work here every day that are afraid of you that come to work every day worried about
20 Chris Phebus flipping out and causing some kind of problem[?]"); 48:3-49:6 (discussing
21 seriousness of offense); and 51:19-23 ("Because you haven't learned, okay? I've given you every
22 break I can, and all you want to do is blame other people.") For that reason, and for the reasons
23 discussed above, the tribal court did not commit a clear error of judgment in weighing the
24 appropriate sentencing factors.

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1 C. The Sentence Was Not Constitutionally Cruel and Unusual.

2 “A punishment within legislatively mandated guidelines is presumptively valid.” United
 3 States v. Mejia-Mesa, 153 F.3d 925, 930 (9th Cir. 1998) (citing Rummel v. Estelle, 445 U.S. 263,
 4 272 (1980)). “Generally, so long as the sentence imposed does not exceed the statutory
 5 maximum, it will not be overturned on eighth amendment grounds.” Id. (citing United States v.
 6 McDougherty, 920 F.2d 569, 576 (9th Cir.1990)). The maximum sentence in this case permits
 7 the imposition of a six-month term of imprisonment, plus a \$4,000.00 fine. The tribal court only
 8 imposed the prison sentence; it did not impose a fine of any amount. Therefore, the sentence was
 9 well within the permissible limits, and was not constitutionally cruel and unusual. Id.

10 CONCLUSION

11 Based on the foregoing, the Court should enter an order affirming Phebus’ conviction and
 12 sentence.

13 Dated: May 15, 2013.

14 McDONALD GARANO WILSON LLP

15 By: _____

16 Patrick J. Murch

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18 Las Vegas, Nevada 89102

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EXHIBIT 12

EXHIBIT 12

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<p>1 CASE NO. CA13-001</p> <p>2</p> <p>3 LAS VEGAS PAIUTE TRIBAL COURT</p> <p>4</p> <p>5 -oOo- COPY</p> <p>6</p> <p>7 CHRISTOPHER PHEBUS,) 8 Appellate,) REPORTER'S TRANSCRIPT 9 vs.) OF 10 LAS VEGAS PAIUTE TRIBE,) ARGUMENTS ON APPEAL 11 Respondent.</p> <p>12</p> <p>13</p> <p>14 BEFORE THE TRIBUNAL</p> <p>15 HON. WILLIAM THORNE 16 HON. JOHN ST. CLAIR 17 HON. ABBY ABINANTI</p> <p>18 FRIDAY, MAY 17, 2013 2:00 p.m.</p> <p>19 APPEARANCES:</p> <p>20 For the Appellate: In Proper Person</p> <p>21 For the Respondent: PATRICK J. MURCH, ESQ. SETH FLOYD, ESQ.</p> <p>22</p> <p>23</p> <p>24 Reported by: CHERYL GARDNER, RMR-RPR 25 CCR No. 230</p>	<p>Page 3</p> <p>1 MR. PHEBUS: Uh-huh.</p> <p>2 JUDGE THORNE: I'll ask Judge Abinanti</p> <p>3 to introduce herself first.</p> <p>4 JUDGE ABINANTI: I am an enrolled</p> <p>5 member of the Yurok Tribe in Northern California</p> <p>6 where I sit currently as the chief judge. I'm also</p> <p>7 admitted to the superior court bench in San</p> <p>8 Francisco where I currently act as what they call a</p> <p>9 duty judge.</p> <p>10 I'm on duty for a 72-hour shift to do</p> <p>11 all the probable causes and TPOs, and before the</p> <p>12 last couple of years I was on the San Francisco</p> <p>13 bench for a number of years. He wants us to say</p> <p>14 how many. I don't know that I want to. Let's just</p> <p>15 say for a long time.</p> <p>16 And prior to that I was a CFR judge</p> <p>17 for my tribe for fishing court and during the time</p> <p>18 I was a San Francisco judicial officer I also was</p> <p>19 the chief judge at Yurok through an agreement</p> <p>20 between tribal court and administrative office of</p> <p>21 the court for the state because we were trying to</p> <p>22 establish an ongoing court. I will say that it's</p> <p>23 more than 20 years but not-- less than 50. All</p> <p>24 right.</p> <p>25 JUDGE THORNE: What school did you</p>
<p>Page 2</p> <p>1 LAS VEGAS, CLARK COUNTY, NV, FRIDAY, MAY 17, 2013</p> <p>2 2:00 p.m.</p> <p>3 -oOo-</p> <p>4 PROCEEDINGS</p> <p>5 JUDGE THORNE: Good afternoon and</p> <p>6 welcome. Because you may not be familiar with the</p> <p>7 panel members, I've asked before we start they</p> <p>8 introduce themselves so you know who we are and</p> <p>9 where we come from and then we'll begin argument.</p> <p>10 What we anticipate doing is proceeding</p> <p>11 just a little bit different. We'll ask the</p> <p>12 prosecutor to go first because there were some</p> <p>13 questions the panel have, and then we'll give</p> <p>14 Mr. Phebus a chance to respond and add anything he</p> <p>15 thinks is important that we need to hear, then</p> <p>16 we'll recess.</p> <p>17 Hopefully we'll come to some consensus</p> <p>18 about the result, and it's our intention to come</p> <p>19 back and try to announce an opinion orally and then</p> <p>20 follow it up with an order. We know in tribal</p> <p>21 court people are not used to waiting months to get</p> <p>22 a written opinion the way they do in state or</p> <p>23 appellate court.</p> <p>24 Is that process okay with you?</p> <p>25 MR. MURCH: That's fine.</p>	<p>Page 4</p> <p>1 graduate from?</p> <p>2 JUDGE ABINANTI: I'm sorry. I</p> <p>3 graduated from the University of New Mexico some</p> <p>4 time ago.</p> <p>5 JUDGE THORNE: John.</p> <p>6 JUDGE ST. CLAIR: Good afternoon.</p> <p>7 Thank you. My name is John St. Clair. I'm the</p> <p>8 chief judge currently of the Eastern Shoshone and</p> <p>9 Northern Arapaho tribal court in central Wyoming.</p> <p>10 I graduated from the University of Wyoming in</p> <p>11 1973.</p> <p>12 I've been working as a chief judge in</p> <p>13 the tribal court since 1983 which is right now 30</p> <p>14 years. We had originally been a CFR court. The</p> <p>15 tribe asked me to draft a law and order code to</p> <p>16 make the Shoshone/Arapaho tribal court so that's</p> <p>17 what I did in 1997 so we've been a tribal court</p> <p>18 since that time. We have two tribes on our</p> <p>19 reservation, 2.3 million acres, 35 miles by 35</p> <p>20 miles. We have the Northern Arapaho tribe and the</p> <p>21 Eastern Shoshone.</p> <p>22 JUDGE THORNE: I'm Bill Thorne, Pomo</p> <p>23 and Coast Miwok from Northern California, graduate</p> <p>24 of Stanford Law School. I've been a judge for 34</p> <p>25 years now, the last 13 on the Utah Court of</p>

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1 Appeals. So you know a little bit about us.
 2 Counsel, if you'd make an appearance,
 3 we'll start with you.
 4 MR. MURCH: Good afternoon. My name
 5 is Patrick Murch. I'm the tribal prosecutor, and
 6 I've brought Seth Floyd from my office with me who
 7 is fairly fresh off a clerkship with the State of
 8 Nevada supreme court.
 9 JUDGE THORNE: In the matter of Phebus
 10 versus Las Vegas Paiute Indian tribe, go ahead.
 11 MS. MURCH: Good afternoon. The Court
 12 asked the Tribe to address two issues. The
 13 elements of the crime are improper influence in
 14 official matters met beyond a reasonable doubt and
 15 then the second issue is was the sentence an abuse
 16 of the judge's discretion or was it cruel and
 17 unusual punishment given the facts and
 18 circumstances.
 19 Addressing the first issue, the
 20 elements of the crime are threat of harm to a
 21 public servant.
 22 JUDGE THORNE: Let me interrupt you.
 23 Having reviewed the transcript which is fairly
 24 short, what's the threat to the chief? It was
 25 clearly a threat to his window. What's the threat

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1 to the chief?
 2 MR. MURCH: It's his office and if
 3 he's sitting in there, he certainly should feel
 4 threatened for his safety if a rock is going to
 5 come through the window and also Mr. Phebus has
 6 admitted that I threatened the chief with this rock
 7 so I don't know --
 8 JUDGE THORNE: Again, reading the
 9 transcript I remember him saying that he agreed he
 10 threatened to throw a rock through the window but I
 11 think there's no characterization about whether he
 12 threatened the chief.
 13 There's where I'd like you to let me
 14 make that connection because I don't see those as
 15 necessarily tied. It's certainly reasonable but to
 16 be beyond a reasonable doubt I need some help.
 17 MR. MURCH: Okay. I don't know that
 18 you need to have a direct threat of harm. I'm
 19 going to hit you with this rock. I think you need
 20 to have a threat that could cause harm to an
 21 individual that that's sufficient to satisfy the
 22 statute.
 23 JUDGE THORNE: Isn't the context -- if
 24 I say in a laughing and joking manner to a friend,
 25 oh, buddy, I'm going to kick your ass, is that a

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1 threat or if instead I'm angry and I'm just about
 2 to punch him and I say to say those words, would
 3 that be a threat? So help me with the context.
 4 MR. MURCH: There's two elements to
 5 the context. There's the context of Mr. Phebus
 6 walks in and says I need you to get the order for
 7 me from Dave Colvin, the general counsel for the
 8 tribe. The chief says I can't do that. I'm not
 9 able to do that.
 10 This is the response. I'm going to go
 11 to the tribal health office. I'm going to see if
 12 my certificate of Indian blood is there and if it
 13 is, I'm going to come back, throw it through your
 14 window wrapped around a rock, and the next day he
 15 shows up and manifests his intent to follow through
 16 with that threat by presenting it to the dispatcher
 17 and asks for Chief Belcher.
 18 The dispatcher says Chief Belcher is
 19 not here so he says The next time he comes in, tell
 20 him I've got something for him. He shows him the
 21 rock. I think that's sufficient to show harm.
 22 The elements as you said threatening
 23 harm to a public servant or retaliation for past
 24 conduct and I think all of those elements have been
 25 met. We talked briefly about the threatening harm

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1 so I'll carry on with that.
 2 JUDGE ST. CLAIR: Excuse me. How far
 3 away from the window is the chief's desk?
 4 MR. MURCH: It's right next to it.
 5 It's right up front. I know that's not in the
 6 record. That isn't reflected.
 7 JUDGE ST. CLAIR: That's the reason I
 8 asked.
 9 MR. MURCH: If I may go outside the
 10 record for a second, the tribal court judge is very
 11 familiar with the location of the chief's desk. He
 12 knows the area. He walks past when he comes in to
 13 sit. You have to have gone past the chief's office
 14 which is on the left as you walk in. He's been in
 15 there speaking with the chief and myself on a
 16 number of occasions also.
 17 It's certain that if Mr. Phebus felt
 18 like he wanted to follow through with that threat,
 19 the chief would be sitting close enough to the
 20 window that he could be harmed.
 21 JUDGE THORNE: If he wanted to follow
 22 through with the threat, I mean if it really was a
 23 true treat, why didn't a rock come through the
 24 window?
 25 MR. MURCH: I don't think that -- I

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1 can't answer that. Mr. Phebus may be able to
2 answer that, but I think that's not the proper
3 inquiry. I think the inquiry is was a threat
4 made. I don't think we need to go so far as a
5 threat made and carried through.

6 JUDGE THORNE: You don't think that
7 the law implies an ability and an intent or at
8 least opportunity to follow through immediately.

9 MR. MURCH: I don't think so.

10 JUDGE THORNE: So threat in the future
11 some day I'm going to do it as opposed I'm going to
12 do it to you or the next time I see you I'm going
13 to do it.

14 MR. MURCH: It implies a threat that's
15 connected to another, there's another element which
16 is retaliation.

17 JUDGE THORNE: Interpreting most state
18 laws there's a requirement of imminence to go with
19 the threat or at least some sort of time connection
20 rather than just a generic some day it's going to
21 happen.

22 MR. MURCH: If you take the past
23 conduct into account and the fact that Mr. Phebus
24 had just gotten out of jail a few weeks before that
25 and this was an escalation on that past conduct, I

1 In your appendix of exhibits, 19, on page 15.

2 I'm sorry. On Exhibit 19 is the
3 transcript of the hearing of the trial that we're
4 talking about now, this incident. On page 15 at
5 line 6 the Court asks Mr. Phebus why do you believe
6 that the chief, Chief Belcher is the individual to
7 contact Colvin, meaning Dave Colvin the tribal
8 attorney, about the order that Mr. Phebus
9 originally came in to get.

10 I don't believe he needs to. I'm
11 accusing him about the certificate of Indian blood
12 and making false documents to put me in jail.
13 That's why I came down here to threaten him with
14 that rock.

15 There's a direct admission from
16 Mr. Phebus. He came to threaten the chief, and
17 while we're on that little paragraph there, that's
18 one of the elements of the crime is retaliation. I
19 came down here to threaten him.

20 I'm sure Mr. Phebus is going to talk
21 to the Court about the certificate of Indian blood
22 and the significance, not just this issue. I'm
23 sure he's going to get into his disenrollment and
24 the issues pertaining to that. I think this is
25 outside the scope of the appeal but they are part

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1 think the threat is sufficiently inferred.

2 I don't know. The statute doesn't say
3 anything about an imminent threat. I'm going to do
4 it right now. It just says threatens harm, no time
5 period involved there. Threatens harm and it has
6 to relate to a decision.

7 JUDGE THORNE: It's my impression most
8 state codes also don't spell that out yet it's
9 implied in case law.

10 MR. MURCH: I can't speak to that
11 issue directly but --

12 JUDGE THORNE: I know that's beyond
13 what we asked you specifically to brief so . . .

14 MR. MURCH: But I would say that there
15 is sufficient evidence in Mr. Phebus's own
16 admission, yes, I did threaten him with a rock. I
17 think that in and of itself is sufficient to
18 satisfy the statute. I don't think he needed to
19 follow through with it immediately. I think you
20 can --

21 JUDGE THORNE: Is there someplace that
22 he actually said I admit I threatened the chief or
23 that I admit I threatened to throw the rock through
24 the window?

25 MR. MURCH: That's a good question.

1 of an ongoing theme from Mr. Phebus, and I've
2 included a couple other transcripts from other
3 hearings.

4 JUDGE THORNE: Certificate of blood
5 reminds me I have a question of how the Court has
6 jurisdiction over Mr. Phebus if he's not a tribal
7 member.

8 MR. MURCH: Pursuant to United States
9 versus Bruce as an Indian.

10 JUDGE THORNE: As a generic Indian as
11 opposed to a tribal member?

12 MR. MURCH: Correct. United States
13 versus Bruce an Indian is defined as -- it sets out
14 a list of factors.

15 JUDGE THORNE: Is that the major
16 crimes act? It was a federal prosecution, wasn't
17 it, as opposed to a tribal prosecution?

18 MR. MURCH: It was in federal court so
19 I assume it was a federal prosecution but the Court
20 has determined on two occasions that it has

21 jurisdiction over Mr. Phebus.

22 JUDGE THORNE: Again, I need you to
23 help me walk through that process because under
24 U.S. versus Duro and then the federal legislation
25 that followed Duro it gave tribal courts criminal

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1 jurisdiction at least recognized tribal courts
 2 criminal jurisdiction over tribal members and
 3 members of other tribes.
 4 Now, the federal court pursuant to
 5 major crimes act, assimilated crimes act, and
 6 general crimes act has jurisdiction over Indians,
 7 and I think the case you cited, Bruce, helped
 8 define for the ninth circuit what Indian meant for
 9 purposes of those federal prosecutions, but I'm not
 10 familiar with a case that applies that definition
 11 within the context of Duro and then the legislation
 12 that followed that so if you can help me.
 13 MR. MURCH: If we could have the
 14 Court's indulgence for one second. The tribal code
 15 I believe sets forth the jurisdiction of the
 16 Court.
 17 JUDGE ABINANTI: Take a moment and
 18 find it because I think we are interested in it.
 19 JUDGE THORNE: It's probably easier
 20 when you're sitting down. Just take as long as you
 21 need.
 22 MR. MURCH: I apologize. I thought
 23 that the tribal code said the tribal court has
 24 jurisdiction over Indians. That issue's --
 25 JUDGE ABINANTI: It does or does not?

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1 MR. MURCH: The tribal court has
 2 criminal jurisdiction. The heading of the section
 3 I just looked at does not say it has jurisdiction
 4 over Indians.
 5 JUDGE ABINANTI: What does it say?
 6 MR. MURCH: As enumerated in the
 7 code --
 8 JUDGE ABINANTI: So it doesn't refer
 9 to this defendant.
 10 MR. MURCH: It's what that says.
 11 JUDGE ST. CLAIR: You mentioned some
 12 decisions that the court had decided in the past,
 13 the tribal court.
 14 MR. MURCH: The tribal court.
 15 JUDGE THORNE: Not the appellate
 16 court.
 17 MR. MURCH: No. And that issue has
 18 not been --
 19 JUDGE THORNE: Jurisdiction is
 20 always --
 21 MR. MURCH: I understand. Let's back
 22 up a little bit and look at this in a bigger
 23 picture because Mr. Phebus is going to get up and
 24 talk about how does the Court have jurisdiction
 25 over him when he decided I'm not a member but I

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1 should be able to come in here and test my
 2 disenrollment.
 3 I don't know how familiar the Court is
 4 with the history behind Mr. Phebus's disenrollment
 5 but there is an appellate court order and I don't
 6 know if any --
 7 JUDGE THORNE: We've seen reference to
 8 it.
 9 MR. MURCH: There is an appellate
 10 court order that says the disenrollment was
 11 improper, and Mr. Phebus has an issue with that not
 12 being upheld by the tribal council so he wants the
 13 benefit of the tribal court for that purpose in the
 14 civil context of disenrollment and his behavior
 15 over and over again is related to his disenrollment
 16 but then he doesn't want the benefit of the tribal
 17 court for other purposes when it doesn't suit him.
 18 JUDGE THORNE: It could be said the
 19 tribe has the same argument on both sides, that
 20 they don't want him as a member until they can
 21 throw him in jail.
 22 MR. MURCH: You're correct. It could
 23 be seen both ways. I guess my answer to your
 24 question is I didn't brief that issue but it has
 25 been briefed to the tribal court. I know that I

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1 briefed it one time and I believe that there is
 2 United States case law from one of the circuit
 3 courts, not the supreme court.
 4 JUDGE ABINANTI: That's really not
 5 going to help us unless we have some citation.
 6 MR. MURCH: I can get my office --
 7 JUDGE THORNE: We'll certainly let you
 8 do that.
 9 MR. MURCH: If you would call Melissa
 10 and ask her to send me the brief on jurisdiction.
 11 Have her e-mail Andre that decision. Certainly
 12 that issue has been addressed and now that you
 13 mentioned it I don't remember. I know that there's
 14 a significant discussion about the Bruce case.
 15 I don't know if there's also a
 16 discussion about tribal court having jurisdiction
 17 over Indians and again, another aspect of this
 18 argument is Mr. Phebus wants to be able to go to
 19 the city of North Las Vegas or the city of Las
 20 Vegas and get put in jail and say, hey, you don't
 21 have jurisdiction over me. I'm an Indian. So,
 22 again, I understand the Court's point and if we can
 23 find that information, I'll sure give it to you.
 24 So the next element is the chief a
 25 public servant. I don't know if the Court has any

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1 questions about --

2 JUDGE THORNE: I don't think there's
3 any question about that.

4 MR. MURCH: Oh, I think we're okay
5 with that. So we've got the threat of harm which
6 the Court is going to determine whether that was a
7 threat of harm but we've got at least three
8 different instances spelled out in the brief. He
9 comes in, admits it.

10 JUDGE THORNE: It certainly appears to
11 be a logical problem if not a legal one.

12 MR. MURCH: Say that again.

13 JUDGE THORNE: It certainly appears to
14 be a logical or a practical problem and not a
15 tactical legal issue.

16 MR. MURCH: Correct. Chief Belcher
17 gets up and says what happens and then the
18 dispatcher comes in and says Mr. Phebus was like
19 you described just like that, he walked in with the
20 rock.

21 That's the argument that there is a
22 threat of harm. I don't know that it needs to be
23 imminent and given the fact that Mr. Phebus had
24 just gotten out of jail three weeks before that for
25 behavior that was slightly less aggressive and also

1 the certificate of Indian blood and where it came
2 from. The judge ordered it because Mr. Phebus
3 wasn't able to get medical care from the BIA when
4 he was in prison at a BIA facility so the judge
5 said, we'll get you a certificate of Indian blood
6 and then the BIA can pay for it, and Chief Belcher
7 the whole time is the middle man so Mr. Phebus sees
8 him as the person responsible for getting the
9 certificate of Indian blood. Mr. Phebus is going
10 to get up and say that's why I'm in jail.

11 That's not the case. You'll see
12 shortly you'll see our analysis of the Bruce
13 factors and the certificate of Indian blood and I
14 believe it's part of the record which Mr. Phebus
15 included with his papers. It says three-eighths
16 Southern Paiute or three-eighths. He claims to be
17 five-sixteenths.

18 JUDGE THORNE: Which is less.

19 MR. MURCH: Which is more.

20 (Overlapping speakers.)

21 MR. MURCH: That's why I'm an
22 attorney. I don't have anything to do with math.
23 Anyway, he claims some discrepancy not what that
24 says versus what he is. So that's not at issue
25 here but that's what's going to be discussed I'm

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1 directed at someone, I think the chief is
2 appropriate and the Court was appropriate in
3 interpreting that as a threat of harm.

4 And the last element of that statute
5 is either purpose for influencing the decision or
6 the retaliation. The first one is the order from
7 Dave Colvin. The chief says I can't get it for
8 you. That's an issue the Tribe has to deal with.
9 You've got to go to the tribe for that or Dave
10 Colvin himself. The Tribe is represented and I
11 can't get in the middle of that. Okay. Then I'm
12 going to throw a rock through the window. We went
13 through that analysis.

14 The second part of that is the
15 retaliation and Mr. Phebus explicitly references in
16 the paragraph that we just read his certificate of
17 Indian blood. He says Chief Belcher created, made
18 this certificate of Indian blood in order to put
19 him in jail.

20 The contents of the certificate of
21 Indian blood are not entirely relevant either for
22 purpose of jurisdiction or for purposes of the
23 appeal or for the conviction. It says what it
24 says.

25 Chief Belcher explained the history of

1 sure.

2 He believes that Chief Belcher is the
3 middle man for this piece of paper and was
4 responsible for its creation and delivery to the
5 BIA. That's why the Court has jurisdiction over
6 him. That's not the case.

7 So that gets, you know, that covers
8 the retaliation aspect of it so I believe that the
9 Tribe proved beyond a reasonable doubt all three or
10 four elements of the crime depending on how you
11 characterize the number of elements.

12 And then the second issue that the
13 Court asked us to discuss was the sentence and was
14 the sentence an abuse of the judge's discretion.

15 Now, given that the tribal code
16 doesn't contain a definition of what an abuse of
17 discretion is, there's very few cases at all. We
18 looked at a case from the eighth circuit. There's
19 other cases from other circuits that say different
20 things about what an abuse of discretion is in
21 different contexts.

22 I think the one we chose is fairly
23 generally accurate, and I'm sure the Court will
24 correct me if I'm wrong. Did the Court look at the
25 right things? Did it analyze the right factors?

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1 Did it put too much weight on one of the factors?
 2 Did analyze the right factors or did it not analyze
 3 the right factors or did it put too much weight on
 4 the wrong factors?

5 We've gone through the analysis of
 6 what factors the Court looked at and that are
 7 important actually and what are required by the
 8 tribal code and basically the three most important
 9 are let's look at prior conduct. We put a couple
 10 of different transcripts in from different --

11 JUDGE THORNE: It's clear from the
 12 record that there's a series of continuous
 13 encounters.

14 MR. MURCH: That's correct, Your
 15 Honor, and I only put in the encounters with this
 16 judge. Mr. Phebus has an extensive history in
 17 front of the Court. The file I have is the size of
 18 this table, and I wanted the Court to know that
 19 we're not going back to 2004, 2002 in looking at
 20 all of his conduct.

21 We're looking at what the judge said
 22 because this judge is making the determination as
 23 to sentencing and even though this judge has said
 24 he's read his entire file which I think is
 25 important, I think he understands the

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1 jurisdictional aspect.

2 He understands the disenrollment
 3 aspect of it. I think that the record shows that
 4 this judge has been more than fair and given
 5 Mr. Phebus more than sufficient opportunity to fix
 6 his behavior. He's given him suggestions about
 7 what he can do next, how he can do things
 8 differently.

9 JUDGE THORNE: Clearly there are
 10 judges who want to change people's behavior but the
 11 law doesn't let the judge just say you need to
 12 change, but the legislative branch created a series
 13 of rules that the Court is supposed to say, you
 14 violated this, here's the sanction that comes from
 15 that as opposed to just you're not behaving
 16 properly.

17 MR. MURCH: Correct. But when you
 18 look at the behavior, we consider all three of the
 19 elements met, the code --

20 JUDGE THORNE: For argument we assume
 21 that there's grounds but I guess one of my concerns
 22 is six months in jail for a nonviolent offense
 23 seems to be a lot. Maybe -- I understand that the
 24 judge knew Mr. Phebus, knew the background, wanted
 25 to change his conduct but just the appropriateness

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1 of six months for a nonviolent offense seems to
 2 be unusual.

3 MR. MURCH: I would respectfully take
 4 issue with the characterization it's a nonviolent
 5 offense. When somebody says I'm going to throw a
 6 rock through your window and then he shows up with
 7 a rock and it's a good sized rock the next day and
 8 this is three weeks after getting out of jail for
 9 behavior that's a little bit less but it's still
 10 proven at the -- in the tribal police department
 11 where there's other employees working, it's not
 12 just him and the chief having the conversation,
 13 which is a few months after the trespass petition
 14 was filed.

15 JUDGE ABINANTI: Well, I think you
 16 might be confusing outrageous behavior with violent
 17 behavior.

18 MR. MURCH: Mr. Phebus has a problem
 19 with the disenrollment.

20 JUDGE ABINANTI: Clearly.

21 JUDGE THORNE: It seems to be the --
 22 at least one appellate panel agreed with him.

23 MR. MURCH: Correct. Possibly on more
 24 than one occasion. It's not for the tribal
 25 prosecutor to take issue with. It's not for the

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1 tribal judge in the context of a criminal trial and
 2 sentencing. That's not that. You can be
 3 displeased with conduct with the result without
 4 showing your displeasure but displaying --

5 JUDGE THORNE: I think his anger is
 6 probably reasonable. His method of demonstrating
 7 that is probably unacceptable so we're trying to
 8 draw that rein.

9 MR. MURCH: I think the judge who was
 10 sitting in your chair there said the same thing a
 11 few weeks ago. He's given him opportunity after
 12 opportunity. If you read the transcripts, he says
 13 it's possible -- the one he just got off before
 14 this one -- he says it's possible that there's a
 15 first amendment issue here.

16 Mr. Phebus is expressing his
 17 displeasure with the disenrollment so I'm going to
 18 let him out and give him credit for time served,
 19 and I believe in the same transcript if not the
 20 hearing before that he said you can't behave like
 21 this. You can't act in this manner.

22 You need to go across the street and
 23 if the tribal council said we're the supreme court
 24 of this tribe whether that's right or wrong, I'm
 25 not the person to decide that, but that's what they

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1 said and the federal court has said on at least one
 2 occasion maybe two that you haven't exhausted your
 3 tribal remedy so we can't help you.
 4 Instead of going to the tribal council
 5 and the tribal court judge here has offered to lift
 6 any orders from tribal judges saying you can't go
 7 across the street because he's done the same types
 8 of behavior out there, making threats to people on
 9 the tribal council who he believes have done him
 10 wrong.

11 So for Mr. Phebus to get out of jail
 12 after the judge gives him a break and then to come
 13 back in and just a short time later engage in
 14 conduct that's more disturbing -- I know disturbing
 15 is not the standard but it is a threat and that's a
 16 threat. That's sufficient given the fact that
 17 Mr. Phebus has a history of harassing people.

18 He's got a stalking conviction. He's
 19 got disorderly conduct convictions. I don't know
 20 that he has an assault conviction, but there's a
 21 series of convictions for threatening people who he
 22 believes have done him wrong and this goes right in
 23 line with that and for the judge to have given to
 24 him -- as you can see from the transcript, there's
 25 a long order where he makes a number of findings of

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1 fact.
 2 He says he showed up on the day and he
 3 was doing community service but no anger management
 4 and then the next one is he wasn't do either. He
 5 has disregard for the Court's order. He has
 6 disregard for due process. He has disregard for
 7 the bench.

8 The tribal members, the tribal police
 9 have a right to be safe and feel safe. If the only
 10 way to deal with that is by giving Mr. Phebus a
 11 criminal sentence -- the Court was hamstrung. You
 12 can see in the transcript there's four or five
 13 different occasions where it says you tell me, give
 14 me the reason why I shouldn't put you jail. The
 15 Tribe asked for six months. You tell me why I
 16 shouldn't put you in jail. He didn't do --

17 JUDGE THORNE: He kept saying the
 18 disenrollment is -- they're out to get me. The
 19 judge said I've given you enumerable
 20 opportunities. Mr. Phebus said I'm sorry, I
 21 overreacted. I'm listening to you and I can go to
 22 the tribal council if you'll lift that order. If
 23 anything, I think that he would have -- I think the
 24 judge would have not given him six months.

25 JUDGE ST. CLAIR: On the transcript

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1 page 37 it says I'm sorry I did what I did and came
 2 in here with that rock. Do you see it?
 3 MR. MURCH: I see it.
 4 JUDGE THORNE: Line 10, page 37.
 5 MR. MURCH: I see it. That's in the
 6 context of Mr. Phebus's presentation to the Court,
 7 not in the context of sentencing and certainly not
 8 in the context of what happens between then and the
 9 end of the hearing.

10 JUDGE ST. CLAIR: That's part of the
 11 evidence then.

12 MR. MURCH: Correct. I would agree
 13 with that, but given Mr. Phebus's continued
 14 arguments, I would suggest that he wasn't really
 15 sorry. That's not the issue. And given the fact
 16 that this is a pattern --

17 JUDGE ABINANTI: In he could better
 18 present himself, we wouldn't be in this position.
 19 What you've got is somebody who's got a personal
 20 stake in something, and that's why we create a
 21 system. He got caught up in that. Which is not to
 22 excuse it. I'm just saying that's a classic
 23 example of it.

24 MR. MURCH: I appreciate that. I'm
 25 sure if you read the transcript the judge

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1 appreciates that, but at some point you've got to
 2 say enough is enough, and I think the judge did
 3 that in this instance.

4 It goes to the escalated behavior. It
 5 goes to the fact that he met all the elements of
 6 the crime. It goes to the fact that he had
 7 mentioned that he was sorry but his behavior
 8 afterwards, his comments afterwards didn't suggest
 9 that he was sorry at all, and I think if this court
 10 allows him to get out and remain out and overturns
 11 the conviction or reduces the sentence to time
 12 served, I think that sends Mr. Phebus a message
 13 that, hey, it's okay for me to do it because I've
 14 got some people who are willing to have my back
 15 because they understand my plight. They understand
 16 the disenrollment. There's issues with the
 17 disenrollment.

18 That's opening the door for Mr. Phebus
 19 to continue to try to persuade people that his
 20 disenrollment was improper using threats of
 21 violence, other improper means, and then trying to
 22 get a conviction overturned based on the fact that
 23 he's in front of the panel now.

24 JUDGE THORNE: Okay. We'll give you a
 25 moment to confer with your colleague while I ask

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1 Mr. Phebus for his comments so, Mr. Phebus,
2 whatever you think we need to hear.
3 MR. PHEBUS: Okay. Let's see now.
4 When I -- when we had this incident with that rock
5 I did come in here and I had a rock and I did tell
6 Belcher previously that I was upset with him that
7 he was going to, that I threatened him with the
8 rock through his window, but I didn't say through
9 his office window.
10 I couldn't -- as angry as I was what
11 was going through my head was his car window
12 actually but after that incident the law
13 enforcement, Belcher wrote a complaint and filed
14 charges against me.
15 In the meantime they gave me 30 days.
16 I didn't do anything. I didn't follow-up on the
17 threat. I didn't mean it. I was angry because of
18 the certificate of Indian blood ended up in my
19 medical files and the rest of my files were missing
20 and I didn't know where they went and again it was
21 Belcher as a middle man that made that certificate
22 of Indian blood and asked for it that it ended up
23 in my medical files because I have the paperwork
24 between him and the BIA and that's what I was angry
25 with.

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1 I apologized in the court but the
2 judge didn't accept it but again I always go back
3 to how this Court has jurisdiction over me because
4 in his brief he says that -- am I allowed to talk
5 about this?
6 JUDGE THORNE: You can talk about --
7 within time limits you can talk about anything you
8 think we need to know.
9 MR. PHEBUS: Okay. Well, as far as
10 Bruce I have a problem with Bruce because I don't
11 feel it's being used fairly. It may be used fairly
12 on me because I am now just an Indian and I may
13 have been a tribal member previously but it ain't
14 fair when he does it to other member descendants in
15 this court because if he did do that, it would
16 prove that their memberships were wrong.
17 JUDGE THORNE: Help me understand.
18 I'm not sure I tracked what you were talking
19 about.
20 MR. PHEBUS: Bruce breaks down my
21 history. After those disenrollments breaks down my
22 history. Those disenrollments on our 1940 census
23 role which is used for tribal membership I have two
24 grandparents on there which is all of my blood
25 quantum and all of my mom's blood quantum.

1 The tribal council in 1999 did not
2 want to use my grandma's so my mom's quantum got
3 halved into three-eighths. My blood quantum got
4 lowered to three-sixteenths. In his brief right
5 here he even mentions what happened why my blood
6 quantum is, he even gives me a three-sixteenth
7 blood quantum, mentions my blood quantum and why I
8 was disenrolled and why the Tribe didn't want to
9 accept my blood quantum. Okay? He did that as
10 prosecuting attorney.
11 Bruce comes in after that and is
12 allowed to be used because I am no longer a tribal
13 member with a quarter or more blood quantum. I am
14 between an eighth and a quarter so they're allowing
15 abuse but when they do that, what about these other
16 descendants of tribal members which I wrote down in
17 my brief. I gave two examples.
18 Well, when you break their family
19 history down to allow testimony to use Bruce on
20 them they don't have a Las Vegas Paiute blood
21 quantum because when you track their history down
22 it shows the history because I was on the
23 enrollment committee two months before I got
24 disenrolled or two years so I know their history.
25 But the judge, he don't listen to that

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1 because he only prosecutes them simply because
2 they're descendants of a tribal member and he's
3 doing the same thing to me but he doesn't realize
4 that my blood quantum is more.
5 JUDGE THORNE: Okay. I think I
6 understand that point. Let's go back to what you
7 were doing.
8 MR. PHEBUS: Another thing that Bruce
9 does that is unfair is because Bruce only makes
10 reference to me as being an Indian. Well, my
11 grandmother is on that 1940 census role and it
12 gives her blood quantum and it says that she is a
13 Paiute.
14 Well, how come Bruce can't recognize
15 her as an Indian when it's written, when she's
16 written down as one. They're allowing themselves
17 to use Bruce when my blood quantum is not -- I do
18 not fall under Bruce. I'm a tribal member because
19 I have a blood, more than a quarter blood quantum
20 but Bruce is being used to prosecute me but yet it
21 won't recognize my other Indian blood. It's a
22 written blood, you know. Do you understand what
23 I'm saying?
24 JUDGE THORNE: I do.
25 MR. PHEBUS: Okay. And I just feel

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1 that Bruce is being used unfairly against me and
2 the certificate of Indian blood -- he says that he
3 had asked the judge and got a court order. Well, I
4 haven't got nothing, no paperwork from him where he
5 asks the judge. I've asked for it. I've gotten no
6 court order where the judge gave him permission to
7 have it.

8 JUDGE THORNE: Okay. I think we
9 understand the enrollment issue. Apparently
10 there's an appeals court decision that agrees with
11 you so we accept what you're telling us is the
12 case, but what I need you to talk about is the
13 offense that landed you in jail this most recent
14 time and why you think that might be okay or not
15 okay.

16 MR. PHEBUS: No, I don't think it was
17 okay. I shouldn't have did what I did but again,
18 once again I was angry at the fact that I went to
19 equity health -- okay? -- and found the certificate
20 of Indian blood in my medical health files with --
21 all my other paperwork was missing. I had came
22 down here and asked one of the police officers to
23 go up to the equity health and make an incident
24 report with me.

25 I had a hard time getting cooperation

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1 from that police officer because in his incident
2 report he did it twice because the first incident
3 report wasn't, I didn't agree with it because it
4 wasn't right.

5 He didn't write the information they
6 needed to show the Court what happened to my
7 previous paperwork and then, and so he had to come
8 back two weeks later. It wasn't 'til after I feel
9 that Belcher found out about this incident report
10 'cause I was going to write a complaint with the
11 police department about my paperwork that he
12 decided to file charges and you can see that in the
13 dates between the charges he filed and my incident
14 report that I feel that he was just doing it to
15 cover himself for him for producing that
16 certificate of Indian blood which ended up in my
17 medical files.

18 JUDGE THORNE: Okay.

19 MR. PHEBUS: And the dates will match
20 that I had my incident report made before I was
21 going to start my complaint but it was too late.

22 JUDGE ABINANTI: Do you see at all
23 that even though you're right that your approach is
24 hanging you out to dry here. Do you get that?

25 MR. PHEBUS: Yes. I know it is 'cause

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1 I can't afford an attorney.

2 JUDGE ABINANTI: It isn't just because
3 you can't afford an attorney. You're a bright man
4 and I'm sure your mother has told you this a
5 million times because I see her sitting in the
6 back. You've got to figure out a way to
7 communicate without crossing the line.

8 JUDGE THORNE: Even when you're right.

9 JUDGE ABINANTI: Especially when
10 you're right. I mean I understand getting angry
11 and I'm not going to tell you not to get angry.
12 I'm just going to suggest to you that you have
13 every right in the world to be angry. It's when
14 you step over the line that causes the problem.

15 If I was in your position, I would be
16 angry but it's what we do with that that's the
17 problem. I think you know that. Like I said,
18 you're a bright man. This is not the first time
19 you thought of it or heard of it. You've got to
20 figure it out. Right?

21 It seems to me what you're saying
22 you've got a higher court saying yeah, you are
23 right. You've got a long political fight here and
24 if you're going to stay in for the duration --
25 which I think you are -- you're going to have to

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1 figure out a way to do it a way it doesn't end up
2 with you spending an inordinate amount of time in
3 jail because that's not going to happen.

4 MR. PHEBUS: I have tried to go across
5 the street and have even written the tribal council
6 to meet with the council. I got my paperwork right
7 here from the Tribe's attorney and again when I try
8 to and my situation with law enforcement and
9 everything that I wanted to speak with them about
10 but the tribe's attorney writes on behalf of the
11 council and he makes reference to the
12 disenrollments and why I cannot go in front of the
13 council.

14 He makes reference so I can't help
15 myself and try to go across the street to explain
16 things because I do feel Belcher is wrong. What
17 can I do to the police chief who is a public
18 servant when he's getting into our enrollment files
19 and allowed to have documents that he shouldn't.

20 JUDGE ABINANTI: That's kind of a
21 separate issue. I think at that point he was
22 trying to help you and it got fouled up for both of
23 you. Let's set that aside. I think the bigger
24 issue is how do you resolve an ongoing very
25 difficult political issue, and what you're saying

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1 is that you feel thwarted and not able to do --
 2 MR. PHEBUS: Yeah. I can't do it.
 3 JUDGE ABINANTI: You haven't been able
 4 to do it. I wouldn't say you can't. Politics.
 5 JUDGE THORNE: Sooner or later you may
 6 figure out a way to win but it's going to be hard
 7 to do that if you're in jail all the time because
 8 nobody's going to take you serious.
 9 JUDGE ABINANTI: You've got to figure
 10 this is a long haul situation. Look at the history
 11 of this problem. Politics goes on and on and on
 12 and it's really who is standing at the last call
 13 here. We're not at the last call on any panel or
 14 political issue.
 15 It is a major political issue for this
 16 tribe. It's not just you. There's a number of
 17 people. You have to figure out how to be that last
 18 person standing or -- this is a political problem,
 19 you know, and you've got to separate those arenas
 20 and, like the judge said, not end up -- your
 21 ability to resolve it is compromised by going over
 22 the top.
 23 You have to figure out a political
 24 response and I get that you've tried political
 25 responses and it's not worked, and that is very

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1 frustrating. I get that. If I had the answer if I
 2 sat up here and thought if he did this, that would
 3 do it. I don't have the answer. I'm not saying
 4 it's an easy problem. I don't see that.
 5 MR. PHEBUS: But him saying I want to
 6 go to North Las Vegas or to a city jail where I can
 7 say the tribe kicked me out and whatnot there was
 8 an incident here with another party of the
 9 disenrollment where one of the people who is now a
 10 council member was taken from the colony and put in
 11 the county jail as a white person as a non-Indian
 12 but yet is allowed to sit up on tribal council so
 13 it's like they get to fix whatever they do wrong
 14 under the name of the tribe Las Vegas Paiute but,
 15 you know, I don't get no --
 16 JUDGE THORNE: Mr. Phebus, as Judge
 17 Abby said, if all of that is absolutely true, and I
 18 have no reason to believe that it's not, the
 19 difficulty is with you're charged with breaking a
 20 criminal law.
 21 Even if you're justified, even if
 22 you're absolutely right about all of the enrollment
 23 problems and the political problems, it doesn't
 24 help your cause to end up sitting in jail in
 25 northern Nevada. And I agree I don't know the

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1 answer for you either but being in jail isn't the
 2 answer.
 3 JUDGE ST. CLAIR: That much I know.
 4 JUDGE THORNE: So we're here because
 5 you sent a letter to the Court basically boiling it
 6 down you didn't think it was fair.
 7 MR. PHEBUS: No, I didn't.
 8 JUDGE THORNE: That's why we're here
 9 to listen to you. Is there something you can give
 10 us? I think we understand the enrollment part. We
 11 don't even disagree with you about that but what
 12 can we do to solve this problem? You winding up in
 13 jail someplace, that's not going to help.
 14 MR. PHEBUS: Okay. Mr. Thorne, you
 15 and Mr. St. Clair were here on another appeal. In
 16 your guys' order you guys had wrote 'cause again it
 17 was about due process and that I had said that I
 18 wasn't getting due process of the law. Well, I'm
 19 not.
 20 I feel I'm not getting due process
 21 under the law because of the disenrollment and how
 22 it affects me in the court system here. It does
 23 affect me. As a subordinate organization this
 24 Court is not Las Vegas Paiute but you guys allow it
 25 to make a certificate of Indian blood for me and be

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1 used against me, then isn't that -- in my appeals I
 2 had wrote a misrepresentation of the Tribe's
 3 constitution and bylaws where the tribal council
 4 and the judge believe that tribal council is the
 5 supreme court but it's not like that.
 6 In here you write according to the
 7 1970 constitution and bylaws that they have the
 8 right to do that. These guys weren't even tribal
 9 members in 1970. There's no way they can use it
 10 they weren't members of the tribe which I tried to
 11 show you but when they're allowed to misrepresent
 12 that constitution and bylaws, it affects me here.
 13 When this -- I'm trying to prove that I'm a Las
 14 Vegas Paiute but yet the Court is telling me that
 15 no, I'm not. And I get angry over it.
 16 JUDGE THORNE: Although I think the
 17 Court said as far as the Court's concerned you
 18 are. That was the appellate decision was the
 19 disenrollments were wrong that you are a member so
 20 it's not the Court that's saying you're not.
 21 MR. PHEBUS: Okay. Well, the way I
 22 handle the certificate of Indian blood at Indian
 23 health was wrong. I did apologize to the judge and
 24 he did feel it wasn't enough but, you know, what
 25 can I do now because the certificate of blood has

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1 already been made. It was made long, way before
2 this instance. It was made back when I was put --
3 history about the certificate -- this is about my
4 charge. It's not the certificate of Indian blood,
5 right?

6 JUDGE THORNE: That's right. We
7 believe you about the certificate.

8 MR. PHEBUS: Again, I did come into
9 this -- I came into the office twice, once when he
10 was speaking with Belcher again asking him about
11 helping me get some paperwork from Colvin because
12 Colvin wouldn't cooperate with me and then I did
13 get upset with him like I have many times before
14 and stormed out of this office and I did say, what
15 if I had thrown a rock through your window. Okay?

16 Days later I did come back when
17 Belcher wasn't here. I didn't -- shouldn't have
18 done that. I apologized for that in court. But I
19 didn't do it. They gave me 30 days until my court
20 date and no incidents had happened. I didn't mean
21 to say that and I wasn't going to carry through on
22 that but it happened and six months I don't think
23 was right.

24 JUDGE THORNE: So let me make sure
25 that I'm understanding what you're saying. You

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1 said the words but you didn't mean it as a threat.
2 It was just an expression of anger.

3 MR. PHEBUS: That's right. I did walk
4 into the office because at the door of me on video
5 as they say with a rock in my hand. That rock
6 wasn't just a plain rock. It had the certificate
7 of Indian blood, the one that Belcher made that was
8 in my medical file because that's where I just came
9 from to get a copy of that certificate of Indian
10 blood and I had it notarized by equity health.

11 They were wrapped together and I had
12 came in and that's when I said this is for Belcher
13 and that was it and walked out and nobody, and the
14 Tribe's testimony that included influence, improper
15 influence in official matters is I didn't stop or
16 delay anybody's work. I didn't. It didn't harm
17 anybody. It didn't stop anybody from doing their
18 work. Like I said, they went over a month until I
19 went to court until the judge put me in jail.

20 JUDGE THORNE: Do you have any other
21 questions for Mr. Phebus?

22 JUDGE ABINANTI: No.

23 JUDGE THORNE: John.

24 JUDGE ST. CLAIR: Mr. Phebus, you
25 know, I sympathize with your position on the

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1 enrollment. Our tribe had the same problem not
2 with disenrollment but with enrollment. A mom was
3 married to someone on the outside. Her children
4 weren't eligible. The tribal court rules in her
5 favor and the tribal council won't enforce it so,
6 you know, it's a familiar problem that, you know,
7 we know about and we're aware of and so I
8 sympathize with your position, and where you're
9 getting off track is your way of trying to solve
10 that and it's not going to matter.

11 I mean if you break the law, you'll be
12 prosecuted whether it's by the Tribe here or by the
13 people that took that other lead. You know, there
14 will be prosecution someplace so that's not going
15 to help you at all. It's going to hurt you.

16 So you're just going to have to find
17 some way maybe politically with organizing people,
18 doing something to try to get your problem solved
19 because, yeah, it's inconsistent, you know.

20 As lawyers we know about criminal
21 jurisdiction, civil jurisdiction. The lay people
22 don't quite know it that well. How can they say
23 I'm not an Indian yet they're prosecuting me.
24 That's kind of what I get out of your brief. So I
25 guess my suggestion to you is just for you to think

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1 of ways to proceed without crossing that line.

2 JUDGE THORNE: Counsel.

3 MR. MURCH: I do have the brief. If I
4 could address two points before we talk about the
5 brief. Your Honor mentioned kind of an important
6 civil discourse in terms of protesting the
7 disenrollment. That's something that Mr. Phebus
8 has to figure out. He hasn't figured it out yet.
9 It has been ongoing and I'm sure a frustrating
10 process for him.

11 I can't comment on that, but I can say
12 that there are better ways to do things than to
13 threaten people with a rock and when the behavior
14 is such that the Tribe takes notice and prosecutes
15 his criminal behavior and the tribal court judge
16 has heard everything and there wasn't, it wasn't
17 about an expression of anger.

18 The evidence showed that it was a
19 threat, then that is sufficient to satisfy the
20 elements of crime so I think there's enough here
21 that we don't need to overturn the decision to get
22 to the jurisdictional argument.

23 I do have the brief if I can
24 approach. This is from the-- I think we submitted
25 this in October 2011. The Court had asked us to

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1 address the jurisdictional evidence because
 2 Mr. Phebus got --
 3 JUDGE ABINANTI: Could you give us
 4 just a second to read it.
 5 MR. MURCH: Sure.
 6 (Pause in proceedings.)
 7 JUDGE THORNE: We have a recollection
 8 of a case but we can't pull up the site where
 9 recently the federal court has said before they can
 10 prosecute under -- they cannot without proof of
 11 enrollment.
 12 JUDGE THORNE: That's certainly what
 13 it used as well in our context like the Indian
 14 Child Welfare Act and so forth.
 15 MR. MURCH: I think the federal
 16 court -- and I don't want to add fuel to the fire
 17 here.
 18 JUDGE THORNE: We can't remember the
 19 site.
 20 MR. MURCH: I think the federal court
 21 has jurisdiction over certain offenses which
 22 Indians or tribal members as the case may be and
 23 doesn't have jurisdictions over other people who
 24 belong to certain groups but in the case the
 25 supreme court has said that in Lara that the --

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1 authorizes Congress to permit tribes -- exercised
 2 its tribal authority to -- 25 USC 1301(2).
 3 JUDGE ABINANTI: Nonmember Indians are
 4 members somewhere else; is that correct?
 5 MR. MURCH: I believe that is the way
 6 that's interpreted.
 7 JUDGE ST. CLAIR: That was the fact of
 8 the case, wasn't it?
 9 MR. MURCH: I don't know that's the
 10 fact of the case.
 11 JUDGE ABINANTI: He was a member of
 12 the tribe.
 13 MR. MURCH: I don't know that's the
 14 fact of the case.
 15 JUDGE ST. CLAIR: I do.
 16 MR. MURCH: My interpretation of that,
 17 and I could be wrong, is my interpretation is
 18 nonmember Indian that's why they go through the
 19 analysis. The analysis was cut off at tribal
 20 member then they would say nonmember Indians who
 21 are members of another tribe and they said
 22 nonmember Indians and they go through the analysis
 23 of what is an Indian, not necessarily somebody who
 24 is just a member of a recognized tribe.
 25 Do they hold themselves out as a

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1 Indian? Do they identify themselves as an Indian?
 2 They wouldn't have to go through that test if he
 3 had a piece of paper that says I'm a member of a
 4 tribe. They wouldn't have to do that analysis.
 5 My argument is going to be nonmember
 6 Indians means you do that analysis to figure out if
 7 somebody is an Indian and if they are regardless if
 8 they're a member of a federally recognized tribe
 9 the Tribe has authority to prosecute them.
 10 JUDGE THORNE: Okay. Thank you.
 11 Anything else, counsel? I'm not suggesting -- I
 12 just want to make sure I don't cut you off.
 13 MR. MURCH: You haven't cut me off,
 14 but I'll think of it as you leave.
 15 JUDGE THORNE: Mr. Phebus, anything
 16 else you would to say?
 17 MR. PHEBUS: In his brief he defines
 18 my mom as three-eighths Indian and that's according
 19 to Tribe's reference and stuff? Okay. And this is
 20 being justify Bruce and my prosecution in this
 21 court. Well, when this disenrollment started in
 22 1999 there was a casualty, there's another incident
 23 that resulted from the disenrollment square where
 24 two tribal members one who was a council member and
 25 a police chief and one was just a tribal member,

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1 well, said -- in this incident I have brought in my
 2 little brief to you because where I feel that the
 3 judge and the prosecuting attorney and the Tribe's
 4 attorney take a -- their positions are for
 5 convenience.
 6 I wrote it like I said when he made
 7 reference to my mom's blood quantum and my native
 8 status this one incident where the police chief had
 9 got a court order to the judge to kick in the door
 10 and retrieve all the property -- okay? -- well,
 11 that person whose door was kicked in by the police
 12 chief had filed charges against the police chief
 13 and the Tribe -- okay? -- and in the court between
 14 a judge and the prosecuting attorney the
 15 prosecuting attorney of that case 'cause I got them
 16 right here wasn't the prosecuting attorney took the
 17 defense of the tribe, of the police chief and --
 18 okay? -- took the defense of the police chief and
 19 was able to defend the police chief because she was
 20 a tribal member but yet he's going against my mom
 21 as a tribal member putting information against
 22 her.
 23 When this case had appeared what was
 24 discovered with they kicked in that door of that
 25 person's house was that that person had collected a

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1 bunch of information in reference to that person's
 2 native status that they were not family members
 3 which actually meant they shouldn't have been
 4 enrolled. What the judge allowed and by letting
 5 the prosecuting attorney defend that person, the
 6 judge had allowed them to resolve that case out of
 7 court but that don't happen here.
 8 He gets to make reference to my
 9 family's status but yet when it comes to somebody
 10 else's court case it was just, that's where I get
 11 the -- from. Okay? And the same with, when that
 12 judge quit, another judge came named Greg Koppe.
 13 I'm upset because again the police
 14 chief's allowed to get the certificate of Indian
 15 blood and say that the judge let him. Well, we
 16 have another judge who wrote a letter saying that
 17 enrollment files have been removed and tampered
 18 with. How can he make the certificate of Indian
 19 blood after a judge had wrote that and it affects
 20 me in court -- and, well, that's it.
 21 JUDGE THORNE: Okay.
 22 MR. PHEBUS: But, again, I just don't
 23 feel that he should be allowed to prosecute or to
 24 make reference using Bruce because it's not being
 25 used fairly. Bruce would show how wrong everybody

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1 else's enrollment is around here but it's only
 2 being used to convict me and to justify their
 3 convictions and I don't think it's fair.
 4 JUDGE THORNE: Okay. We'll take the
 5 matter under advisement. Give us a few moments to
 6 see if we can reach an agreement among us. If so,
 7 we'll come back and let you know what the decision
 8 is. If we can't reach an agreement, then we have
 9 to prolong the discussion and issue something more
 10 detailed in writing so give us just a few moments.
 11 Walk outside, get some fresh air. We'll send
 12 Mr. Franklin after you if we're able to reach each
 13 an agreement. Thank you.
 14 Court will be in recess.
 15 (Whereupon a recess was
 16 taken at 3:09 p.m. and
 17 the proceedings resumed
 18 at 3:24 p.m.)
 19 JUDGE THORNE: On behalf of the panel
 20 let me tell you first thank you for the help that
 21 you've given us. This is a relatively difficult
 22 issue to try and sort through. There are certainly
 23 legal complications. There are practical
 24 complications and we are experienced enough in
 25 tribal court matters to understand that we really

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1 have to try to blend those together.
 2 I want to thank you for the initial
 3 brief that you filed with all of your help on the
 4 supplemental as well.
 5 We're going to issue an oral decision
 6 this afternoon. We're going to follow it up in a
 7 couple of weeks with a more detailed written
 8 decision.
 9 The essence of our opinion is that
 10 we're going to hold that the Tribe does not have
 11 authority to prosecute a nonmember, non-enrolled
 12 Indian for a criminal offense based on supreme
 13 court precedent as modified by federal especially
 14 the Duro case so to the extent that the Tribe is or
 15 may be the supreme court of the, the tribal council
 16 is the supreme court for the final decision on
 17 legal matters to the extent that they consider
 18 Mr. Phebus not an enrolled member, they forego the
 19 ability to prosecute him criminally.
 20 Mr. Phebus, what that means, though,
 21 is that if you choose to conduct yourself the way
 22 you did on that day, understand that that may well
 23 be that certainly is the classic disturbing the
 24 peace kind of thing. I think there may be an open
 25 question whether or not that's a threat.

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1 Under the tribal court there clearly
 2 is a violation of conduct that would subject you to
 3 prosecution. You may get prosecuted in the city or
 4 the county and face penalties there and with
 5 appellate opportunities that you don't have here.
 6 There you may be required to follow a
 7 much more formal procedure. They may not interpret
 8 a letter as an appeal so it will be much more
 9 difficult for you if you should end up in that
 10 system and I think the panel has tried to tell you
 11 before, you have to figure out a way. Anger isn't
 12 going to solve it for you even when you're right.
 13 But we're going to reverse the
 14 conviction, absolve the jail sentence until such
 15 time as the Tribe chooses to enroll you as a member
 16 at which time they then are allowed to prosecute
 17 you. Or if you should become a member of another
 18 tribe, they can prosecute you for criminal conduct
 19 but under supreme court precedent the Tribe is not
 20 allowed to prosecute in our minds a nonmember of a
 21 tribe or at least someone who is not a member of
 22 another tribe.
 23 The federal court precedence that
 24 deals with unenrolled Indians tends to deal with
 25 benefits, health benefits, or qualifications under

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1 specific federal criminal statutes but that has not
 2 been extended to tribes that we know of. We
 3 certainly could be wrong but that's our decision
 4 and we'll follow it up with a written order from
 5 there.
 6 JUDGE ABINANTI: I would like to say a
 7 couple things. One is that I do believe that the
 8 chief is trying to help you with that certificate,
 9 that he was trying to help you because of the
 10 health issues because you are qualified to receive
 11 health benefits, and I think he was trying to do a
 12 good deed and it kind of took off on its own, and
 13 you need to be careful about perceiving things as
 14 an attack which they're not meant to be.
 15 I think he was from everything I read
 16 trying to do something for you, and I did know from
 17 my own personal experience that those certificates
 18 are problematic. I have a brother. We have the
 19 same parents and we have different CIBs which as I
 20 understand science which is theoretically and
 21 practically impossible but there you have it, you
 22 know, so he didn't do that or cause that.
 23 He was trying to do something kind and
 24 got himself caught up in something. How you
 25 conducted yourself here today led me to believe

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1 that you do know how to conduct yourself. You do
 2 have proper home training. You know better. I
 3 don't know how else to say it, you know, and you've
 4 got to do better.
 5 MR. PHEBUS: Yes, I know.
 6 JUDGE ABINANTI: And if you don't, I
 7 think you're going to find yourself running afoul
 8 of the state courts and they're just going to
 9 process you like you were, you know what's going to
 10 happen.
 11 JUDGE THORNE: They're just going to
 12 use you like a number. They're not going to worry
 13 about you as an individual so be careful.
 14 JUDGE ABINANTI: Yes, be careful.
 15 JUDGE ST. CLAIR: The other grounds
 16 for the decision is that the tribal code here does
 17 not specifically say or define what the
 18 jurisdiction, criminal jurisdiction is.
 19 JUDGE THORNE: Yes. The code
 20 specifically or at least does not specifically say
 21 that it's limited to tribal members or who and
 22 again based on federal supreme court precedent and
 23 the jurisdiction modifications that were made by
 24 Congress after the Duro case led us to conclude
 25 that we have to read into it limitation on the

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1 tribal members or members of other Indian tribes.
 2 MR. MURCH: If I could address the
 3 Court briefly.
 4 JUDGE THORNE: You need clarification.
 5 MR. MURCH: Clarification and a point
 6 to make. My legal career is relatively short. I
 7 was a teacher in the past life and it has been one
 8 of the highlights of my seven-year legal career. I
 9 appreciate the opportunity to appear in front of
 10 all of you. I appreciate the Court's decision. I
 11 just want a clarification in case we end up back in
 12 here with Mr. Phebus on the issue of the Court. I
 13 understand the Court's ruling to mean criminal
 14 jurisdiction. There's a provision in the code that
 15 relates to --
 16 JUDGE THORNE: We're not trying to
 17 preclude that at all. It's limited to just they
 18 cannot prosecute him criminally as a tribal member
 19 or member of another Indian tribe. It can in no
 20 way limit powers of exclusion, other kind of
 21 remedies that are available for any person who
 22 violates the peace and order of the community.
 23 MR. MURCH: Thank you.
 24 MR. PHEBUS: Thank you.
 25

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1 REPORTER'S CERTIFICATE
 2
 3
 4 STATE OF NEVADA }
 5 COUNTY OF CLARK } ss
 6 I, Cheryl Gardner, RMR-RPR, CCR 230,
 7 do hereby certify that I took down in Stenotype all
 8 of the proceedings had in the before-entitled
 9 matter at the time and place indicated and that
 10 thereafter said shorthand notes were transcribed
 11 into typewriting by me and that the foregoing
 12 transcript constitutes a full, true, and accurate
 13 record of the proceedings had.
 14 IN WITNESS WHEREOF, I have hereunto
 15 set my hand and affixed my signature in the County
 16 of Clark, State of Nevada, this 28th day of May,
 17 2013.
 18
 19
 20
 21
 22 /s/ Cheryl Gardner
 23 CHERYL GARDNER, RMR-RPR, CCR 230
 24
 25

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EXHIBIT 13

EXHIBIT 13

**IN THE COURT OF APPEALS
FOR THE LAS VEGAS PAIUTE TRIBAL COURT**

CHRISTOPHER W. PHEBUS,)	
)	
Appellant,)	
)	
vs.)	No. CA13-001
)	
THE LAS VEGAS TRIBE OF PAIUTE)	
INDIANS)	
)	
Respondent.)	
_____)	

PER CURIAM:

Honorable William Thorne, Chief Judge of the Appellate Panel, Honorable John St. Clair, Appellate Justice, and Abby Abinanti, Appellate Justice, sitting en banc on May 17, 2013 in Las Vegas, Nevada.

Appearing for Appellant, self-represented was Christopher W. Phebus.
Appearing for Respondent, was Patrick J. Murch, attorney .

The intended decision was announced by Chief of the Panel Justice Thorne following submission by the parties and a conference of the panel. Herein is the written confirmation of that decision.

This appeal is hopefully the final legal chapter of an on going dispute between the parties. (Which is not to say that the dispute is resolved, rather this Court has urged upon the Appellant the need to conduct his protest of certain of the Respondent's actions in a legally acceptable manner. Specifically, to address or redress those claims in the political arena in a manner that does not cross into illegal acts.)

The Appellant has been outraged by the 1999 action of Respondent to disenroll certain tribal members, including Appellant. His conduct in addressing this issue has at times crossed the line of acceptable behavior. Most recently resulting in a criminal complaint filed in November of 2012, which resulted in a conviction for violation of Tribal Code Section 5-60-020, Improper Influence in Official Matters, wherein the Appellant was sentenced to a term of six months of incarceration. On May 6, 2013 the Chief Judge of this panel issued an immediate stay of that sentence, ordering the release of Appellant forthwith, with conduct and appearance orders, setting this matter for briefing and argument.

The argument addressed in detail the issues of the factual basis for the conviction (whether or not one existed) and whether or not the sentence imposed was pursuant to the Indian Civil Rights Act of 1968 an infliction of "cruel and unusual punishments" and therefor void. The arguments of both parties were repeatedly and inexorably drawn to the disenrollment dispute, which clearly motivated all of Appellant's behavior. He claimed it also should be considered to have mitigated his behavior. The Court listened to these arguments but did not have to resolve these issues because the threshold argument of jurisdiction trumped all such concerns.

In the end it, the disenrollment, was in fact definitive, but not in a manner either party had fully contemplated. Though in fairness Appellant did touch on the exonerating factor of the disenrollment. As the Chief Judge of the Appellate Panel pointed out the Respondent, in seeking to punish the behavior of Appellate had relied upon their belief that they had the legal authority to do so, that their sovereign powers extended to jurisdiction over the person of Appellant, specifically that they had criminal jurisdiction over said Appellant. Yet, they clearly had specifically deprived Appellant of his enrolled status, and continued to do so even in the face of a 2005 Court decision to the contrary. In so doing they left Appellant with the status of Indian ONLY in terms of certain services definitions, e.g., IHS. So that if Respondent had criminal conduct jurisdiction over the Appellant it must flow from that status and/or unless as the Chief Judge noted the basis for that assertion somehow resulted from his status as a "generic Indian".

However, to date "generic Indian" is not, nor has it ever been successfully claimed as a basis for tribal court criminal jurisdiction. Criminal jurisdiction on Indian reservations has many limitations the most important limitation for the purpose of this discussion is the need for the defendant to be an Indian. Indian in this situation is very specifically defined as ENROLLED Tribal member, which was initially taken to mean enrolled tribal member of the Tribe seeking to prosecute. In recent years following the Duro v. Reina, 495 U.S. 676 (1990) decision and the subsequent "Duro" fix of 25 U.S.C.A. 1301(2) the authority of a tribe to prosecute an offending ENROLLED tribal member for a violation on reservation lands other than those lands where the offender was enrolled has been confirmed.

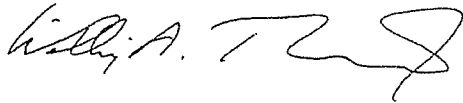
In this instance, the Respondent could point to no jurisdictional constitutional or statutory language extending criminal jurisdiction to non-enrolled tribal members. If Appellant had met that standard the panel may well have felt comfortable to extend Respondent's authority based on the current state of the law. However, that is not the case, nor was Respondent able to point to any constitutional or statutory language for the basis of a prosecution of a former member and/or generic Indian. (This decision makes no claims as to the validity of such an attempt should it be contemplated for future actions.)

Respondent without jurisdiction over Appellate cannot maintain a criminal action against him. The act of disenrollment, so long as it stands, precludes criminal

prosecution by Respondent. Basic concepts of estoppel and fairness prevent the Tribe from depriving Appellant of tribal membership and then prosecuting him criminally as they would have been entitled to do had he not been disenrolled. (The panel cautioned Appellant that criminal prosecution by the State is NOT precluded; this decision is not a free pass to engage in criminal behavior. Criminal conduct precluded by the State may be prosecuted in the State. It should be noted that those possible sanctions far outweigh the possible sanctions in Tribal Court and Appellant should consider himself cautioned. The panel repeatedly instructed/implored Respondent to engage in legal political actions to try and reverse the decision of disenrollment, which has so distressed him. Further criminal actions will in our opinion result in harsh consequences and not lead to resolution of this essentially political question.)

Based on the above it is our decision that the underlying criminal conviction and sentence be vacated and Appellant suffer no further legal consequences from said conviction.

Entered this 10th day of June, 2013.

A handwritten signature in black ink, appearing to read "William A. Thorne, Jr.", with a stylized flourish at the end.

William A. Thorne, Jr.
For the Panel